



CITY COUNCIL STAFF REPORT

MEETING DATE: *February 4, 2004*

REVIEW OF REVISED DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE INSTITUTE GOLF COURSE AND MATHEMATICS CONFERENCE CENTER

RECOMMENDED ACTION(S):

1. Receive applicant and staff presentations and public comment.
2. Provide comment on the Revised Draft EIR

EXECUTIVE SUMMARY: The American Institute of Mathematics and the Corralitos Creek LLC (property owner) are requesting approval to operate an 18-hole private golf course on 192 acres located on the east side of Foothill Avenue at the intersection with East Middle Avenue. The applicants are also requesting approval to convert an existing 58,946 square foot restaurant building into a conference center, headquarters and library for the American Institute of Mathematics.

The development, operation and maintenance of the golf course could have potential adverse environmental impacts. To evaluate these impacts, a Draft Environmental Impact Report (EIR) was prepared and circulated for public review in January 2003. The EIR included several references that the applicant was proposing and an alternative plan to mitigate the project's impacts on endangered species. This alternative was not completed in time to be evaluated in the original Draft EIR. Several of the agencies that commented on the Draft EIR requested an opportunity to comment on the alternative mitigation. In response to these requests, the City revised the EIR to include the alternative mitigation and circulated the Revised DEIR for public comment. The comment period for the Revised DEIR ends on February 4, 2004.

The project environmental impacts and mitigation measures are summarized on Pages V through Page XVI of the Revised DEIR. The EIR identifies 27 significant unmitigated impacts for which there are one or more alternative mitigation measures. The impacts are listed as issues to be resolved because the mitigation is not currently part of the project. The City may choose to require mitigation for some or all of the identified impacts as a condition of project approval. Staff and the EIR consultant will provide a more detailed presentation of the project impacts and mitigation measures at the February 4th meeting.

Comments received at this meeting and during the review period will be incorporated into the Final EIR. Along with the Final EIR, the consultant will prepare a Mitigation Monitoring Program. Public hearings will then be scheduled before the Planning Commission and City Council to approve the Final EIR and the Mitigation Monitoring Program. The Council will also need to certify the Final EIR and adopt findings of overriding consideration if necessary.

The applicant will be requesting approval of a zoning amendment to establish a Planned Unit Development (PUD) district on the subject property. The PUD zoning will include a precise development plan for the golf course and mathematics conference center. It is expected that the zoning amendment application will be considered at the same time the public hearings are held for the Final EIR.

The Planning Commission conducted a workshop on the Revised Draft EIR on January 27, 2004. Attached are the minutes from that meeting as additional background information. A copy of the Revised Draft EIR was distributed to each Councilmember on December 22, 2003. Please bring this document with you to the February 4th meeting.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 1

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

Planning Department Workshop for discussion of Math Institutes Golf Course Environmental Impact Report (EIR)

January 27, 2004

The workshop was called to attention by Planning Commission Chair Mueller at 5:35 p.m.

In attendance: Members of the Planning Commission: Chair Mueller, Commissioners Acevedo, Benich, Escobar, Lyle and Weston.

Staff present: Planning Manager (PM) Rowe and Minutes Clerk Johnson. Director of Community Development (DCD) Bischoff was present in the audience.

Applicant representatives: Stephen Sorenson, Brian Conrey, Thomas Neely, Aquifer Sciences, Inc., David Mattern, Mattern & Associates, Randall Long, RCL Ecology, and Dr. Mark R. Jennings, Rana Resources.

Demetri Loukas, of David Powers & Associates, consultants to the City of Morgan Hill for the preparation of the Draft EIR (DEIR) was also present. PM Rowe announced Mr. Loukas could address comments made about the DEIR during the open/public comment period.

PM Rowe gave an overview of the EIR which had been distributed to all Commissioners. He explained Staff is requesting input at this workshop regarding the completeness and adequacy of the EIR. PM Rowe pointed out that there are 27 significant impacts that are identified as unresolved issues because the mitigation required is not currently part of the project.

PM Rowe informed that the zoning for the project is currently Open Space with the intent to amend the zoning to Planned Unit Development. The applicants are also requesting the conversion/replacement of the former restaurant to be headquarters for The American Institute of Mathematics.

PM Rowe then presented an overview of original draft EIR. Noting the biological impacts mentioned in that document, he went on to explain that at the time of preparation of the original EIR a year ago, there was not an evaluation of the alternative mitigation measures required for endangered species identified as being present on the site.

PM Rowe said that the City has been working for the past year to revise the EIR and subsequently the DEIR has been recirculated with the public comment period ending February 4, 2004. The Revised EIR includes an evaluation of the alternative mitigation for biological impacts and a more detail analysis of drainage and water quality impacts. PM Rowe announced that in addition to the comments offered this night, opportunity for public comment is open until February 4, 2004 when the City Council will also receive public comments at their meeting.

Following the hearing on February 4, 2004 by the Council, the Final EIR is anticipated within four weeks, PM Rowe reported. The Certification of the Final EIR can be anticipated along with the precise plan and PUD zoning, which will be heard by the Commissioners. PM Rowe indicated that Demetri Loukas can address other issues such as drainage and hydrology.

Chair Mueller announced that the applicant's representative would speak first, then the City's Consultant and finally the Commissioners questions would be put forth.

Commissioner Lyle said if the alternative mitigations noted in the DEIR have been evaluated? PM Rowe responded, saying yes, however, any new information the applicant would like to have considered has not been evaluated.

Commissioner Lyle asked the proposed mitigations are sufficient to address the concerns indicated? PM Rowe said, "Yes," and gave examples of some of the mitigations relating to items such as surface and ground water issues. Commissioner Lyle asked if, in general, those issues identified need further study? "What if the proposed mitigations do not meet the criteria found for resolution in the evaluation – and what if others are identified which need mitigation following this meeting tonight?" Commissioner Lyle asked.

PM Rowe cited the mitigations noted, and said that if new issues are brought forth tonight, those must be mitigated as well, but would need to be evaluated.

Commissioner Lyle commented that there appears to be a number of issues which are not proposed for mitigation by the project.

Chair Mueller said that if the identified concerns have been 'listed out'; those have been studied by Consultant; if alternatives for study are presented this date, then the Consultant will have those available for study and inclusion into the final EIR.

Chair Mueller directed that the record show the following Commissioners have had conversations and/or tours with the applicants: Chair Mueller, Commissioners Benich, Lyle, Acevedo, and Engles. Commissioners Weston and Escobar indicated they had received the information/invitation, but did not attend the tour of the Golf Course.

Stephen Sorenson, representative of the applicant, thanked the Commissioners who had visited the project site; he also indicated that the Planning staff had been very helpful. As to the project, Mr. Sorenson stated the purpose of the Institute is simple: to solve complex math problems. Mr. Sorenson explained that math is the basic tool for problem solving. The American Institute of Mathematics is dedicated, he said, to solving problems in a unique way and that includes bringing many people together to solve one specific problem. Mr. Sorenson announced that to date the Institute has published 176 papers reflective of worldwide participants' in the problem solving quest. Mr. Sorenson told the Commissioners, "We decided to fund the math conference and make our emphasis on complex problem solving. We wanted Morgan Hill because we could create a University-like setting with the amenities desirable to our participants: world class libraries, conference/lecture halls, quality food service, and outstanding recreational opportunities such as golf and hiking. Mr. Sorenson compared the planned facilities to Stanford. "We're also interested in establishing outreach programs to education, including public lectures (some of which have already been held at the site), education in schools. If we are to continue, we need a place – and we want to be here, so change in zoning is needed. We need to finish the EIR for the zoning amendment. The Consultant for the City has indicated there are 27 significant impacts which have been identified. We think the focus should be on four issues which we feel are of significant interest to the general public." Mr. Sorenson identified the following:

1. Ground water depletion. Mr. Sorenson said the practices now utilized on-site now address those concerns, as he explained the weather station input, computerized control of irrigation, deep watering of the greens and tee areas, hand watering utilized for 'hot spots' and the Santa Clara Valley Water District (SCVWD) review of the practices utilized. Mr. Sorenson referenced the study the Institute had completed by Aquifer Sciences which indicates the water table has not declined with the use of identified practices. Mr. Sorenson said they have been able to identify how much water is needed at the surface and utilizes deep watering for 'hot spots' by using hand watering techniques – lower water was verified, he said, by the data provided by a SCVWD representative who was on-site for sampling during the study. "We will write up an irrigation plan and submit it to the Planning Department," Mr. Sorenson declared.
2. Nitrates in Ground Water Mr. Sorenson explained the method used for testing in this area and said that tissue samples of the turf, then testing of the irrigation water were laboratory tested and stated that the samples indicated that the treatment provides was a 'good thing' for the grass. "Under fertilizing is better, we have found, and we will continue that," Mr. Sorenson said. "The water district says the fertilizer rates are appropriate. There has not been contaminating of the ground water nor surface water... We intend to minimize Nitrogen applications and will submit that plan to the SCVWD for their review."
3. Pesticides in Water. Mr. Sorenson pledged that the employees of the Institute who care for the golf course will 'store only what will be used within the next few days of application'. There will be an application process with the County before operations begin, utilizing only licensed applicators and 'state of the art' equipment. Mr. Sorenson emphasized that laboratory analyses of numerous samples of water from the site have shown no pesticides in the water.
4. Flooding Mr. Sorenson said, "We have reduced the amount of roadway on site and the culverts placed have limited runoff to less than before the project was begun. I pointed out to visiting Commissioners the apron to the driveway which had the potential for problems; it is fixed now so there will be no instances of local flooding." He went on to explain the one pipe which funnels water to Foothill Boulevard.

Mr. Sorenson introduced Randy Long.

Mr. Long spoke on the water issues as being two basic parts: groundwater and surface water issues, saying what the applicant has done to get coordination and cooperation of all the agencies involved. Mr. Long said, "This is where we have come to now: without very much information, the original EIR tells of significant need for mitigation, but those mitigations are not feasible – it's easier to come up with mitigation but may not work because the data has been extrapolated from other studies." Continuing, Mr. Long indicated so we have concentrated on studies to get actual, factual data. Concerning environmental studies for identifying animals, water issues, CEQA is not actually the best basis. The US Fish and Wildlife and California Fish and Game can identify animals injured or displaced. Early on, the California Fish and Game wanted to defer to the US Fish and Wildlife because of the Red-legged Frog, which is a Federal listed endangered species. US Fish and Wildlife concentrated their study on the frog, salamander, and turtle. Having identified the presence – or potential presence – of those animals, the applicant entered into an agreement for purchase of 51.2 acres off site resulting in compensation at a 2:1 ratio. At the upper part of the creek, the frog and serpentine habitat resulted in a letter agreeing to the off-site habitat replacement and also US Fish and Wildlife concerns resulted in on-site mitigations which include a buffer to be restored along the creek.

Commissioner Weston asked if the City knew of the negotiations the named agencies? PM Rowe said the City is aware, but not party to those negotiations.

Mr. Long said the Water District, and State Regional Water Quality Control Board have been involved in the attempts at problem solving and are monitoring the installed weather station and irrigation management for fine tuning water use to recommend to other golf courses. As to the frogs, Mr. Long explained, a total of 32 of all ages have been counted, indicating the project as a breeding on site; one bull frog has been sighted, so a plan for management of these animals on site has been worked up.

Commissioner Weston said he wanted to paraphrase his prior question: "Have you talked to these other agencies and made deals with them without City input?" Mr. Long responded, "No, the applicant has talked with City representatives about the use permit and the City representatives have worked on helping to identify the agencies we need to talk to. There have been no deals cut."

Tom Neely, of Aquifer Sciences, Inc., spoke on the technical aspect of the water issues. "Looking at DEIR, then comparing the figures to actual data causes questions as how measurements, water testing, making adjustments to calculations was done," Mr. Neely said. He indicated that numerous water samples were collected from various ponds on the site. Mr. Neely called attention to Lake D, citing the lower levels of nitrate present than in prior samplings.

Commissioner Lyle and PM Rowe questioned the testing procedures and asked Mr. Neely if he could explain how the denitrification of the well water was occurring.

Mr. Neely explained the 'mechanism' and theory on which his assumptions are based, but said there was no science to explain why the nitrate levels are lower.

Commissioner Benich asked if testing was completed at various depths in the ponds?

Mr. Neely responded that was the practice used.

Commissioner Lyle said, "Then, you're not sure why (the lower levels) this is happening, nor if it will continue?"

Mr. Neely referenced five years worth of data regarding the underground aquifer which indicates 485 acre feet per year potential for ground water depletion. He continued by explained the location and proximity of the wells, and how 'index wells' maintained by the SCVWD wells can show what is happening with various aquifers within the areas specified. Mr. Neely provided illustration of what the ground water has been doing between the years of 1988 to 2002. He said this pointed out what the groundwater elevation (levels) were in comparison of the groundwater aquifers close to Institute and further away. "Most similar are those right across the street and one mile away; the different elevations were basis for assertion in the DEIR of ground water depletion, but hydraulic analysis does not bear this out," Mr. Neely said.

Chair Mueller said pointed out that the statements made by Mr. Neely covered a 14 year span.

Commissioner Benich asked if there had been consideration of any variance for population growth? Mr. Neely explained how the analysis was done, adding also taken into account was the

rainfall during the time period noted. “Whether there is greater or lesser water in the ground corresponds to the amounts of rainfall,” he said.

Commissioner Lyle questioned whether, if the last 5 years been very wet, would that mask the effect of the level of groundwater?

Mr. Neely turned instead to the nitrate count in groundwater, with some corrections to the DEIR, showed no concentration in of nitrates in the lakes and groundwater. He continued that there is no data to show that levels are as high as indicated in DEIR. The DEIR says there is more than enough fertilizer in the irrigation system, but the data from our studies doesn’t show that finding. Mr. Neely then spoke on DEIR outcome that there is nitrogen infiltrating back into groundwater, suggesting the need for recalculation based on what has been determined. “We have a Nitrogen control plan with supporting documentation,” he asserted.

Commissioner Lyle said one can see on location, that there is less turf being utilized on the golf course than formerly which he theorized may be part of the decline in levels of nitrates and rise in the groundwater aquifers, and wondered what percentage reduction in water and fertilizer used affected those variables?

Mr. Long said he didn’t know, but there was a need to study as the applicants have put in landscaping, including many trees and taken away much of the turf areas.

Commissioner Lyle said these variables may have an interesting effect on many things and the City needs to know answers.

David Mattern of Mattern & Associates, spoke on the flooding and drainage concerns raised in the DEIR. He provided a summary of drainage issues, saying the DEIR was focused on the work of the central drain area which incorrectly channels the water to Corralitos Creek, explaining the slope and topography in relation to the storm drain. “Now in the DEIR, you’re looking at that old storm drain system, which had the capacity of less than 1 cubic foot/second diversions,” Mr. Mattern said. He spoke of the former storm drain being fairly low, noting that the current system, although similar to effects of the former system utilizes lakes A, B, C, E and the San Martin Creek. Mr. Mattern said that there are now more than two times the number of lakes in present project should there be a rise in water level, it can be stored in the lakes. He went on to explain that during a storm the rise in water level causes a detention effect.

Commissioner Lyle asked about detention ability now versus the previous system in considering flooding concerns? Mr. Mattern replied that there is less runoff than before and the reduction amounts to about 25%.

PM Rowe asked if there is enough freeboard at the lakes for the capacity for detention purposes? Mr. Mattern said, yes there is. PM Rowe indicated the information about freeboard is needed because that was an issue in DEIR which had not been answered by the applicant. Mr. Mattern said that particularly Lake A provides a greater level of storage capacity.

Commissioner Benich asked about the calculation of acre feet of storage now versus before. Mr. Mattern said he has studied the level – and it depends on rainfall amounts and the size of storms.

Chair Mueller asked if the rate of flow off property had been studied?

Mr. Mattern said Lake D was not used for storm water detention and any overflow goes to San Martin Creek eventually. “Now, there is less flow from the golf course than before, so if Lake D out-flowed to Foothill Avenue, there would be protection.”

Mr. Sorenson spoke on the outfall from Lake D, noting this to be the main irrigation lake with no drains from the surrounding area of the golf course to that lake. He explained there is a series of outfall, with Lake D to Foothill Boulevard being in place only if a safety error occurs, saying this protection is needed. “We are prepared for a ‘worse case’ by this,” Mr. Sorenson indicated, “if there is overflow from Lake D to Foothill, it will be less than before.”

Commissioner Escobar requested clarification if Lake D is not intended to be detention pond? Mr. Sorenson said, “Yes, if it is full.”

Randy Long said that regarding the lakes, the surfacewater does flow to Lake D, but it is always being drawn down. “We have a lake management plan and need to give that document to the City which shows the drawdown according to plan. All work done by Mr. Mattern has been done in response to this concern in the DEIR,” Mr. Long said.

Dr. Mark Jennings, of Rana Resources, said that relating to the DEIR, the concerns about frogs, salamanders, and turtles, have resulted in good suggestions, and caused the applicant to work with the previously named agencies for identification of exact details. “So any concerns to amount to zero now,” he said “with the installation of buffers and the offsite management plan”

Commissioner Weston again asked about when negotiations occurred with the agencies, if a representative from the City was present? (No). Commissioner Weston expressed concern that City was not involved in those talks.

Commissioner Acevedo, referring to the issue concerning Commissioner Weston, asked if the City want to be involved in the talks? PM Rowe said, “No”, explaining that regarding the agreement with Fish and Game, the City did an independent assessment of the mitigations, pesticide and fertilizer use, etc. and that some of the buffer areas, for example, are different than those suggested by DEIR. The agencies involved tended to focus on areas of concern. The Fish and Wildlife Service, for example, was only concerned with the impact to endangered species. We asked the EIR consultant to come up with their own independent requirements for mitigation. The buffer areas in the EIR are greater in depth than required by Fish and Game because the EIR consultant also factored in the need to mitigate the water quality impacts. PM Rowe said, “The City brought the agencies together, asked what each wanted as part of mitigation for their concerns, and the second mitigation package in the EIR was a as result of these meetings.” He also spoke on replacement habitat the applicant has indicated they will provide.

Randy Long said the applicant was first notified of issues of the Red legged Frog by the City. So the applicant got a consultant. A biological study is the common way to do this process.

Demetri Loukas offered comments regarding his work, saying his firm’s assistance to the City with the DEIR isn’t typical as this EIR was done for continued use and operation. It is known that many of the previous issues are difficult to identify except from photographs, etc., he said. Mr. Loukas informed that discrepancies are common between experts. “Tonight we heard data

not previously known,” Mr. Loukas said. “If additional data has been generated since the preparation of the DEIR, such as pond nitrate levels and we had limited data at time of study, we need the current data for correct update.” He spoke about the information concerning the reduced levels of nitrates, and indicated familiarity with such irregularities, agreeing that he did not know why such phenomena should occur, but said he will definitely look at that. Mr. Loukas also informed that no letters from the SCVWD regarding water depletion agreement or nitrates in groundwater has been provided, so that data is needed as well. Mr. Loukas said there is data in the DEIR regarding mitigation agreements with the named agencies, but US Fish and Wildlife information doesn’t address mitigation of 30 foot versus a 50 ft setback required for water quality so that is needed as well.

Chair Mueller offered members of the public the opportunity to speak as he opened the public hearing.

With no members of the public indicating a wish to comment on the matter, the public hearing was closed.

Chair Mueller declared a recess of the workshop at 6:47 p.m. The workshop was resumed at 7:11 p.m. following the opening of the Planning Commission meeting; Commissioner Engles joined the meeting at 7:11 p.m..

The continuation of the workshop offered the opportunity for questions from Commissioners.

Commissioner Lyle asked Mr. Loukas if the current practices indicated by the applicant are typical of other golf courses? Is this over and above what others do? Mr. Loukas replied that he is not sure would have to check with others. Commissioner Lyles’s next question was directed to staff as he questioned what this DEIR is looking at: is it based on what is existing, or what was on-site with golf course on-going. He noted it is troubling, what was previously authorized on site, such as high volume restaurants, are we now impervious to those developing uses? It seems this DEIR should have been done on existing uses, it seems this comparison is not quite fair, that there is need to compare against what was already there versus beginning with bare land. What there before, was worse, and this proposal is better but not bare land. Furthermore, Commissioner Lyle said, the applicant should come back with changes that individual Commissioners saw, for example, how many less acres are used, how much less irrigation, and what volume less of nitrates are projected than the previous plan?

Commissioner Benich asked Mr. Loukas if he had the benefit of previous owners’ EIR for comparison in the preparation of this one? PM Rowe spoke, saying, “No, there was not a ‘former EIR’. Chair Mueller said there is history of things being done on the property without a permit. PM Rowe informed that CEQA says there is to be a baseline established at the time of the Notice of Preparation was circulated. At that time, the restaurant was no longer in use.

Commissioner Escobar asked about how the figures for ‘rounds of golf’ were established? Mr. Sorenson responded with explanation that a maximum of 36 rounds of golf would be one round of golf per person.

Commissioner Escobar questioned the amount of square footage for the main building, saying 60,000 square feet in are in the building proposed for conversion. The proposal, he said, shows the elevation with a fairly substantial building, almost castle like.

Brian Conrey, Director of Operations for the Institute said the building will house a world class math library, requiring a large amount of space. Also featured, he said, will be courtyards, offices, suites, facility for lectures, and a theater hall for 150 – 250 persons, and some longer term projects. Mr. Sorenson interjected that the center of the building complex will be a very large courtyard, not seen from the outside, with almost whole center being courtyard. Therefore, he explained, the air-conditioned space is far less than indicated.

Commissioner Escobar said media reports have indicated some use for charity golf tournaments. Will these be of the ATT type or high school fundraisers. Chair Mueller pointed out this subject is not included in the DEIR. Commissioner Escobar said he is aware of that, but the issue remains: what is the intent? Chair Mueller rephrased: if the applicant wants to sponsor a high school fundraiser? Mr. Loukas said the issue had not been raised, so was not addressed in the DEIR. PM Rowe said this type of event came to our attention from the media reports after the EIR was prepared, so was not evaluated.

Commissioner Acevedo referenced the DEIR page 116 regarding traffic issues, and saying that the DEIR would have assumed no golf tournaments, but the Mercury News reported it, and it is disturbing that it was ‘out but not considered’. “We would be well served, even though it is not part of the DEIR, it should be – and I would like to see addressed,” Commissioner Acevedo said. He went on to speak to the recommended habitat mitigation for the Red legged Frog, saying that the effect seems minimal, and that while many frogs may have been sited, the concern centers on the count of Red legged Frog. “I think the Castle idea cool, so if they do the castle, visitors should be allowed,” Commissioner Acevedo declared.

Commissioner Weston said it is assumed that the use permit would have its own provisions and conditions, so the Commissioners could expect mitigation of charity golf tournaments as separate issues. He also said he thinks process very interesting and adding he doesn’t fully understand the process from City nor the Applicant’s point of view. Commissioner Weston said he still has concerns about way things were done in past.

Chair Mueller said that from what he saw tonight, he believes that the DEIR issues have been addressed. “Previously, we didn’t have plan, so we can’t address that,” Chair Mueller commented, “so now applicant says here is the plan. How were the issues picked up as proposals for mitigations?” Mr. Loukas responded that the plan was evaluated and determined if is adequate. PM Rowe added that the applicant has agreed by statements in this workshop to the mitigations indicated. Chair Mueller noticed those to be: irrigation, CHMAP plan (for pesticide in water issues) and other mitigation measures.

Commissioner Escobar said that one of unfortunate things for the Commissioners is the , conflicts with the City Consultant, as he indicated the Constant hadn’t had the opportunity for review of the information presented by the applicant at the meeting this evening. “The time frame is close.” Commissioner Escobar commented. “We haven’t yet had the data presented by the applicant tonight evaluated by City staff nor the Consultant.”

Commissioner Weston asked if approval is given to the EIR, would the matter then go to the ARB to have it studied, or does it just become “agreeable, fine” without City agencies having chance to look at such as traffic, trees, etc.

PM Rowe said the precise development plan would be required that includes information on all the projects done on the site, but he hasn't looked at extent to which the ARB involved would be involved. However, all new facilities must be reviewed by the ARB, PM Rowe said.

Commissioner Weston asked if permission had been given for building what was already built? PM Rowe informed that actually there have been no new building except the golf course.

Responding to a question from Commissioner Lyle, PM Rowe said a PUD would be reviewed by the Commissioners for all the site improvements and new uses.

Chair Mueller said there is a need for the DEIR to be updated to reflect the new General Plan as this draft goes back to former General Plan so it is a misrepresentation.

Commissioner Lyle said he surely would like to see an analysis of latest data. Also expressing a concern, Commissioner Lyle said there needs to be some kind of compliance plan. "The City has a role in a monitoring plan; we certainly need that."

Mr. Long spoke, saying a big point is about the studies referenced, and reiterating that all that were available at start of EIR preparation were extrapolated from prior data, so studies indicate a lack of empirical data available. The plans presented tonight, he said, meet the requirement of the agencies; and most importantly, this area for buffers can be more limited in area.

Chair Mueller said it is of concern that the data presented this evening has not been given to the City's consultants. "That needs to happen; the process needed for agreement of assumptions would be likely to provide as much flexibility as possibility in the mitigation measures," Chair Mueller indicated.

Commissioner Weston said he trusts the City's hired independent EIR consultant and trusts City staff, but doesn't see how the Commissioners can be arbitrators of conflicting issues. "I will always be leaning toward the City consultant," he said.

Mr. Loukas said his personal observation has been that all the water entering the creek has not been buffered and that is different from the reports of the applicants' representatives.

Chair Mueller and Commissioner Escobar emphasized the need for the applicant to give the data to the City's Consultant to resolve identified concerns.

Chair Muller said that if Commissioners have further questions, e-mails should be sent to PM Rowe as he will be detailing the issues to forward to the City's Consultant.

PM Rowe said he will be providing comments from this evening's meeting as an attachment to a report to the City Council.

MINUTES RECORDED BY:

Judi M. Johnson, Minutes Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

Agenda Item # 2

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

SUBDIVISION, SD-03-15: E. CENTRAL - WARMINGTON

RECOMMENDED ACTION: Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY: The applicant is requesting to subdivide a 1.539-acre portion of the 28.345-acre project area to construct 10 units representing Phase 3 of the Morgan Lane development. Also requested is the approval of a development agreement covering the 10 units proposed within the subdivision. The project is located on the north side of East Central Avenue, Tracts 9408 and 9474.

Construction began on the Morgan Lane development in July 2002. Phase 1 is currently under construction with 24 of 41 planned home sites completed. Phase 2 consists of eight lots. A Final Map has been recorded for Phase 2; however, construction has not begun. Phase 3 consists of ten lots awarded in the 2002 Measure "P" competition. Future Phase 4 will consist of the remaining 26 lots of Morgan Lane. The developer was awarded a total of 36 building allotments in the 2002 Measure "P" competition for Phases 3 and 4 of Morgan Lane. Twenty-four of the allotments are for FY 2004-05 and the remaining 12 allotments for FY 2005-06. Upon completion of Phase 3, there will be a total of 59 units with six below market rate units. Upon completion, the Morgan Lane development will consist of a total of 85 units with nine BMR's on approximately 28.345 acres.

The Tentative Map for Phase 3 as submitted, is in accordance with the RPD plan approved by the City Council in November 2001. The lot sizes, locations and street alignments are in accordance with the approved RPD. Phase 3 will be built on 1.539 acres with a net buildable acreage of 1.31 acres after the dedication of public rights-of-way.

The Planning Commission considered this application at the regular meeting of January 13th at which time the Commission voted 7-0 approving the request. The Planning Commission resolution, conditions of approval, and subdivision map are attached for reference. The staff report and minutes for the subdivision are attached to the development agreement request within this same agenda.

FISCAL IMPACT: None. Filing fees were paid to the City for the costs of processing this application.



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

Agenda Item # 3

Prepared By:

Finance Director

Submitted By:

City Manager

WATER RATE SURCHARGES

RECOMMENDED ACTION:

Adopt the Resolution revising monthly water system fees

EXECUTIVE SUMMARY: At the January 21, 2004, public hearing, the City Council directed staff to return with a revised resolution to implement a series of 5% surcharges to water rates effective April 2004 and January of 2005, 2006, and 2007. These surcharges are necessary in order for the City to meet the estimated \$34.0 million revenue requirement, or amount that needs to be generated by rate revenue for the period July 2002 through June 2007, to meet operating, capital, and reserve requirements.

As discussed at the public hearing and at earlier City Council meetings, the need to raise additional revenue is primarily related to unexpected perchlorate costs. The City will have spent \$1.4 million on drilling wells, building perchlorate plants, removing nitrates, and monitoring perchlorate in the water supply by June 2004, and expects to spend a \$3.2 million on perchlorate related costs by June 2007, which may not be immediately reimbursed by Olin Corp. Lower rate revenue of \$798,000 also contributes to this shortfall, and this reflects recent relatively flat growth in the volume of water sold to the City's customers, in contrast to the growth anticipated by the consultant. The slowdown in the commercial area has contributed to this drop in anticipated revenue. The \$214,000 in higher operations costs also contributes to the shortfall, and results from higher electricity and personnel costs.

The resolution does require that the annual September 30 Finance Director's water rate report analyze whether the amount of surcharges collected from rate payers is sufficient to finance all anticipated perchlorate related costs through June 30 of the fourth year following. Under the resolution language, any amount determined by the City Council to be in excess of the amount needed to finance all anticipated perchlorate related costs, based upon the report, shall be refunded to customers through future across-the-board percentage rate reductions approved by the City Council, and any already implemented surcharges would be eliminated. Perchlorate surcharge revenues are to be segregated by City staff and spent only on perchlorate related costs.

FISCAL IMPACT: The proposed water rate surcharges would fully fund projected water needs.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REVISING MONTHLY WATER SYSTEM FEES

WHEREAS, Chapter 13.16.030 of the Municipal Code of the City of Morgan Hill (“Municipal Code”) establishes Water Commodity and Service Rates; and;

WHEREAS, Section 13.04.090 of the Municipal Code provides for revision of established Water Commodity and Service Rates; and;

WHEREAS, the City Council of the City of Morgan Hill (“City Council”) has received and duly considered the report entitled “Water and Sewer Fund Revenue Requirements Study,” dated October 17, 2002, authored by Hilton Farnkopf & Hobson, LLC (“Hilton”), along with City staff analysis; and;

WHEREAS, as the Hilton report and staff analysis demonstrate, the Water Commodity and Service Rates established by this resolution do not exceed the reasonable cost of providing water system services within the City of Morgan Hill (“City”); and;

WHEREAS, the fees established by the Hilton report and staff analysis rationally relate to the reasonable cost of providing water system services within the City and proportionally distribute these costs to different classes of users; and;

WHEREAS, the City’s ability to deliver water to all residential, commercial, and industrial customers and to provide sufficient fire flow reserves during recent summer periods has been challenged due to the much publicized perchlorate contamination issues and the capacity of the City’s wells, pipes, and reservoirs, as evidenced by staff reports on March 5, 2003, March 19, 2003, May 21, 2003, and July 16, 2003; and

WHEREAS, City water reservoirs were at critical low levels on at least two occasions during the summer of 2003; and

WHEREAS, the community’s water and energy resources are limited and water conservation extends the community’s consumption of water and energy; and

WHEREAS, a tiered rate structure for water accounts would encourage water conservation to help ensure an adequate and safe water supply in the future and conserve the water supply for the greatest public benefit, by focusing public attention on the water shortage and the need to reduce water usage, and by charging those customers who use the most water the highest incremental rates; and

WHEREAS, Water Code section 375 specifically authorizes public utilities to adopt water conservation programs for its customers and specifically permits the enactment of ordinances to encourage water conservation through rate structure design; and

WHEREAS, a public hearing on adoption of this resolution and the fees outlined in Exhibit A attached hereto was noticed pursuant to and in compliance with Government Code section 6062(a), and set as part of a regular City Council meeting held on January 21, 2004, in the Council Chambers located at City Hall, 17555 Peak Avenue; and;

WHEREAS, the Hilton report, as well as all material supplementary thereto, and all background data referenced in the report, along with staff analysis, was available for public inspection and review at the City Clerk's Office and Finance Department of the City of Morgan Hill; and;

WHEREAS, the City Council has received and duly considered all written and verbal comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and;

WHEREAS, the City Council deems it necessary that Water Commodity and Service Rates be adjusted to ensure that users pay for water system costs in order to promote the public health, safety, and welfare.

NOW, THEREFORE, the City Council, based upon all documents, statements and facts known to the City, does hereby resolve:

SECTION 1. Findings: The City Council hereby finds as follows:

- A. All provisions set forth above are true and correct, and are hereby incorporated herein as findings of this City Council by reference.
- B. The purposes of the fees set forth herein are to finance water system costs and to encourage water conservation.
- C. There is a need for water system services to protect the public's health, safety and welfare.
- D. The facts and evidence presented to the City Council establish that the cost estimates set forth are reasonable cost estimates, and the fees expected to be generated will not exceed those costs.

SECTION 2. Adoption of Fees. Therefore, Water Commodity and Service Rates for the City of Morgan Hill are established as stated in **Exhibit A**, which is attached hereto and incorporated by reference.

SECTION 3. Implementation Dates. The City Council hereby orders that all adjustments to Water Commodity and Service Rates be effective for each monthly billing cycle beginning on or after April 1, 2004, January 1, 2005, January 1, 2006, and January 1, 2007, as described in Exhibit A, subject to the guidelines established below.

The Finance Director shall report to the City Council by each September 30th prior to January 1 of 2005, 2006, and 2007, regarding the need for previously adopted upcoming rate adjustments and rate surcharges approved by the City Council on February 5, 2003, and January 21, 2004, to be effective on the following January 1. The adjustments or surcharges, effective on each January 1 implementation date, shall not be implemented if the City Council, based upon the Finance Director's report, eliminates the January 1 adjustments or surcharges. The Finance Director's annual report shall analyze whether the January 1 adjustments are necessary to provide for anticipated costs through June 30 of the fourth year following the report, and to maintain reserves equal to the following:

- a. Operating Reserve amounting to \$1.8 million
- b. Capital Reserve amounting to \$1.2 million
- c. Rate Stabilization Reserve \$1.3 million

In addition, the Finance Director's report shall analyze whether the amount of surcharges collected from rate payers is sufficient to finance all anticipated perchlorate related costs through June 30 of the fourth year following the report.

All perchlorate surcharge revenues shall be segregated by City staff and spent only on perchlorate related costs. Any amount determined by the City Council to be in excess of the amount needed to finance all anticipated perchlorate related costs, based upon the Finance Director's annual report, shall be refunded to customers through future across-the-board percentage rate reductions to be approved by the City Council. Further, if the amount of perchlorate surcharge revenues on hand at the time of the annual report is determined by the City Council to be in excess of the amount needed to finance all anticipated perchlorate related costs, based upon the annual report, any perchlorate rate surcharge existing at that time shall be eliminated.

SECTION 4. Challenges to Resolution. Any judicial action or proceeding to attack, review, set aside or annul this resolution or any provision thereof shall be brought within one hundred and twenty (120) days of the adoption by the City Council.

SECTION 5. Exemption from CEQA. Pursuant to Title 14, California Code of regulations, Sections 15061(b)(2) and 15273(a)(1-2,4), the City Council finds that this resolution is exempt from the California Environmental Quality Act.

SECTION 6. Severability. If any portion of this Resolution is declared invalid by a court of competent jurisdiction then it is the intent of the City Council that all other provisions of the Resolution shall be severed and remain in full force and effect.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th Day of February, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on February 4, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

CITY OF MORGAN HILL
WATER COMMODITY AND SERVICE RATES

EXHIBIT A (P. 1 of 2)

	CURRENT RATES <i>Inside City</i>	CURRENT RATES <i>Outside City</i>	APRIL 2004 <i>Inside City*</i>	APRIL 2004 <i>Outside City*</i>	JANUARY 2005 <i>Inside City**</i>	JANUARY 2005 <i>Outside City**</i>	JANUARY 2006 <i>Inside City***</i>	JANUARY 2006 <i>Outside City***</i>	JANUARY 2007 <i>Inside City****</i>	JANUARY 2007 <i>Outside City****</i>
<u>MONTHLY SERVICE CHARGES:</u>										
<i>Meter Size:</i>										
5/8"	5.10	7.91	same	same	5.20	8.07	5.31	8.23	5.41	8.39
3/4"	5.10	7.91	same	same	5.20	8.07	5.31	8.23	5.41	8.39
1"	5.10	7.91	same	same	5.20	8.07	5.31	8.23	5.41	8.39
1 & 1/2"	8.48	13.16	same	same	8.65	13.42	8.82	13.69	9.00	13.97
2"	13.63	21.12	same	same	13.90	21.54	14.18	21.97	14.46	22.41
3"	27.21	42.19	same	same	27.75	43.03	28.31	43.89	28.88	44.77
4"	44.06	68.30	same	same	44.94	69.67	45.84	71.06	46.76	72.48
6"	67.68	105.08	same	same	69.03	107.18	70.41	109.33	71.82	111.51
8"	101.70	157.62	same	same	103.73	160.77	105.81	163.99	107.92	167.27
10"	135.62	210.21	same	same	138.33	214.41	141.10	218.70	143.92	223.08
<i>Low income discounts:</i>	(3.07)	(3.07)	same	same	(3.13)	(3.13)	(3.19)	(3.19)	(3.26)	(3.26)

* All fees will be surcharged by 5% of above amounts, effective April 1, 2004, on top of above amounts, to finance perchlorate related costs

** All fees will be surcharged by an additional 5% of above amounts, for a total surcharge of 10%, effective January 1, 2005, on top of above amounts, to finance perchlorate related costs

*** All fees will be surcharged by an additional 5% of above amounts, for a total surcharge of 15%, effective January 1, 2005, on top of above amounts, to finance perchlorate related costs

**** All fees will be surcharged by an additional 5% of above amounts, for a total surcharge of 20%, effective January 1, 2005, on top of above amounts, to finance perchlorate related costs

CITY OF MORGAN HILL
WATER COMMODITY AND SERVICE RATES

EXHIBIT A (P. 2 of 2)

	CURRENT RATES <i>Inside City</i>	CURRENT RATES <i>Outside City</i>	APRIL 2004 <i>Inside City*</i>	APRIL 2004 <i>Outside City*</i>	JANUARY 2005 <i>Inside City**</i>	JANUARY 2005 <i>Outside City**</i>	JANUARY 2006 <i>Inside City***</i>	JANUARY 2006 <i>Outside City***</i>	JANUARY 2007 <i>Inside City****</i>	JANUARY 2007 <i>Outside City****</i>
<u>COMMODITY RATE:</u>										
<u>RESIDENTIAL</u>										
<u>Single Family Tier Rates</u>										
<i>(Per Dwelling Unit per 100 cubic feet)</i>										
1-10 HCF	0.99	1.53	same	same	1.01	1.56	1.03	1.59	1.05	1.62
11-30 HCF	1.98	3.07	same	same	2.02	3.13	2.06	3.19	2.10	3.26
30+ HCF	2.97	4.60	same	same	3.03	4.69	3.09	4.79	3.15	4.88
<u>Multi-Family Tier Rates</u>										
<i>(Per Dwelling Unit per 100 cubic feet)</i>										
1-8 HCF	0.99	1.53	same	same	1.01	1.56	1.03	1.59	1.05	1.62
9-16 HCF	1.98	3.07	same	same	2.02	3.13	2.06	3.19	2.10	3.26
17+ HCF	2.97	4.60	same	same	3.03	4.69	3.09	4.79	3.15	4.88
<u>NON-RESIDENTIAL</u>										
<u>(Per hundred cubic feet)</u>										
<u>All uses</u>	1.61	2.50	same	same	1.64	2.55	1.68	2.60	1.71	2.65

* All fees will be surcharged by 5% of above amounts, effective April 1, 2004, on top of above amounts, to finance perchlorate related costs

** All fees will be surcharged by an additional 5% of above amounts, for a total surcharge of 10%, effective January 1, 2005, on top of above amounts, to finance perchlorate related costs

*** All fees will be surcharged by an additional 5% of above amounts, for a total surcharge of 15%, effective January 1, 2005, on top of above amounts, to finance perchlorate related costs

**** All fees will be surcharged by an additional 5% of above amounts, for a total surcharge of 20%, effective January 1, 2005, on top of above amounts, to finance perchlorate related costs

HCF: Each unit of water equals one hundred cubic feet



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

Agenda Item # 4

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

2003-04 CITY WORKPLAN, SECOND QUARTER UPDATE

RECOMMENDED ACTION:

Accept Second Quarter Update of the 2003-04 Workplan

EXECUTIVE SUMMARY:

On July 23, 2003, the Council adopted the 2003-04 City Workplan. The attached report shows the status of each of the 82 projects in the workplan. Workplan projects are non-routine activities that represent major departmental efforts.

When developing the workplan, departments estimate the time required to attain project milestones. These estimates may not be met for a variety of reasons, including reduced staffing, coordination with outside entities, and the addition of higher-priority activities over the course of the year. At this time, 60% of all workplan projects are projected to be completed on time or ahead of schedule, 38% of the projects are expected to be completed late, and 2% of the projects are on hold.

Of the projects that will be completed later than the adopted schedule, the following projects will not be completed until FY 2004/05:

- Move Acton Museum and Farmhouse
- Police Station Request for Proposal Process
- Granary Project
- Economic Development Strategy
- Economic Development Audit
- Completion of the Monterey Road Traffic Study and Improvement Plan
- Completion of the Urban Limit Line Study
- Update Cultural Resources Preservation Ordinance and Designate Historic Sites and Buildings
- A survey of Planning Division customers
- Construction of the Boys Ranch Reservoir

In addition, two projects are currently on hold. One is the redesign of Building Division customer brochures: this project has been deferred due to budget constraints. The other is development of a high school internship program, as efforts to develop a program in conjunction with high school staff have not been fruitful to date. Staff will continue to try to find learning opportunities for youth.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: *February 4, 2004*

REIMBURSEMENT FOR STORM DRAIN IMPROVEMENTS BY QUAIL CREEK PHASE I (TRACT 9427)

RECOMMENDED ACTION:

1. Approve appropriation of \$ 103,881 from current year unappropriated Storm Drain Impact Fee Fund to fund this reimbursement.
2. Authorize City Manager to execute the attached reimbursement agreement on behalf of the City.

EXECUTIVE SUMMARY: South Valley Developers, Inc. is the developer of Quail Creek, a 52 unit subdivision located on the northeast corner of Watsonville Road and Sunnyside Avenue intersection (see attached location map). In accordance with the City's Storm Drain Master Plan and as part of phase I of the project, the developer was required to install a 54 inch storm drain line in Sunnyside Avenue. The 54 inch storm drain line is sized to handle regional drainage in the area. The City collects impact fees to cover the cost of installing such improvements; therefore, costs associated with the installation of the storm drain line are reimbursable. The developer has completed the work and is now requesting reimbursement from the City in the amount of \$143,361 for the installation of the 54 inch storm drain line.

The total cost of installing the 54 inch storm drain line is \$143,361. To fully reimburse the developer, it is recommended that Council appropriate \$103,881 from the current year unappropriated Storm Drain Fee Fund balance. The balance will be credited back to the developer from the storm drain impact fees owed upon development of phase II and III of his project (\$39,480).

Staff recommends that the City approve the developer's reimbursement request since this work is of regional benefit and the City's storm drain impact fee incorporates the costs associated with the construction of these improvements.

FISCAL IMPACT: Sufficient funds exist in the City's unappropriated Storm Drain Impact Fund balance to provide the requested \$103,881 reimbursement.

Agenda Item # 5

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9426, CENTRAL PARK PH. V

RECOMMENDED ACTION(S):

1. Adopt the attached resolution accepting the subdivision improvements included in Tract 9426, commonly known as Central Park Phase V.
2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

Tract 9426 is a 18 lot subdivision located on the north side of East Central Avenue east of the Calle Mazatan intersection (see attached location map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvement Agreement between the City of Morgan Hill and South Valley Developers, Inc., dated July 25 2002 and as specifically set forth in the plans and specifications approved by the City.

The streets to be accepted are:

<u>Street Name</u>	<u>Street Length</u>
Calle Buena Vista	0.20 miles
Calle Hermosa	0.04 miles
Calle Tierra	0.03 miles

FISCAL IMPACT: Staff time for this project was paid for by development fees.

Agenda Item # 6

Prepared By:

Senior Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ACCEPTING THE SUBDIVISION
IMPROVEMENTS FOR TRACT 9426, CENTRAL PARK PHASE V**

WHEREAS, the owner of Tract 9426, designated as Central Park Phase V, entered into a Subdivision Improvement Agreement on July 25, 2002: and

WHEREAS, Jim Ashcraft, City Engineer, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said subdivision.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned Subdivision Improvement Agreement have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance provisions referred to in Paragraph 10 of the Subdivision Improvement Agreement of July 25, 2002.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the subdivision public improvements.
4. If requested by the developer or subdivider, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th Day of February, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on February 4, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION

CITY OF MORGAN HILL

TRACT 9426, CENTRAL PARK PHASE V

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, signed below, represents the City of Morgan Hill as the owner of the public improvements for the above named development. Said improvements were substantially completed on January 22, 2004, by South Valley Developers, Inc., the subdivider of record and accepted by the City Council on February 4, 2004. Said improvements consisted of public streets, utilities and appurtenances.

The name of the surety on the contractor's bond for labor and materials on said project is American Motorists Insurance Company.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2004.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT

RECOMMENDED ACTIONS:

1. Authorize the appropriation of \$106,000 from the unappropriated Water Fund Balance into account 650-42230-5710 to fund the continuing legal services of Hatch & Parent.
2. Authorize the City Manager to execute a Second Amendment to Agreement with the law firm of Hatch & Parent.

EXECUTIVE SUMMARY:

On May 21, 2002, the City contracted with the law firm of Hatch & Parent to provide the City with legal services in connection with the perchlorate land and water contamination. On August 27, 2003, Council approved an amendment to the contract with Hatch & Parent in the amount of \$175,000. As this matter is ongoing, staff is recommending that Council approve the attached Second Amendment to Agreement to increase the amount to \$281,000 to cover Hatch & Parent's continuing representation of the City's interests, as well as ongoing work by experts on the matter.

A \$106,000 adjustment to the Water Operation Special Counsel Account (650-42230-5710) will be sufficient to fund the second amendment to agreement for ongoing legal services.

FISCAL IMPACT

Funds exist in the unappropriated Water Fund balance to cover these expenses.

Agenda Item # 7

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

TITLE –AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF ENDEMAN, LINCOLN, TUREK & HEATER

RECOMMENDED ACTION:

Authorize the City Manager to execute an Amended Agreement with the law firm of Endeman, Lincoln, Turek & Heater.

Agenda Item # 8

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager

EXECUTIVE SUMMARY:

On August 18, 2003, the City entered into a contract in the amount of \$37,500 with the law firm of Endeman, Lincoln, Turek & Heater to defend the City of Morgan Hill and the City of Morgan Hill Rent Review Commission in two actions filed by Hacienda Valley Mobile Estates: (1) a lawsuit filed in the Santa Clara County Superior Court and (2) an appeal filed in the United States Court of Appeals for the Ninth Circuit. The current contract is insufficient to cover the fees and expenses associated with the upcoming Motion for Summary Judgment in the state court action and a response to the appellant's request for rehearing in the Ninth Circuit. Therefore, staff is recommending that Council approve the attached Amendment to Agreement increasing the contract amount to \$87,500. This amount should be sufficient to cover the anticipated fees and costs associated with the state and appellate court actions.

FISCAL IMPACT:

It is requested that an appropriation of \$50,000.00 be added to the Mobile Home Rent Commission budget.



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

APPROVE PURCHASE ORDERS FOR THE TENANT IMPROVEMENTS FOR THE NEW POLICE FACILITY - GENERATOR

RECOMMENDED ACTION(S):

- 1) Authorize the City Manager to approve a Purchase Order in the amount of \$54,578.34 to Spiess Electric for the Generac Power System Generator purchased for the tenant improvements at the new police facility.

EXECUTIVE SUMMARY:

In July '03 the council awarded a building located at 16200 Vineyard Blvd. as the future Morgan Hill Police Department. The Council also approved the purchase price and the estimated tenant improvements cost to complete the project. Construction has begun and equipment that is provided by the City, and installed by the contractor, needs to be purchased immediately to avoid any delay in the projects completion.

Police facilities are considered "essential facilities" and therefore require an alternate source of power in the event of an emergency. As with the current facility, the new design calls for purchase of a diesel engine driven generator that specifically meets this need.

The cost of the power system falls within the previously approved change order request of \$144,000.00 and is constant with the guaranteed maximum price.

Three separate bids were obtained in accordance with the plans and specifications for the building.

Spiess Electric - \$54,578.34

Kohler Power Systems - \$58,859.63

Peterson Power Systems - \$67,818.63

After bid evaluation by the Construction Manager and City staff, the low bid meets all the requirements as defined in the plans and specifications and staff recommends the approval of the purchase.

FISCAL IMPACT:

The funds set aside for the tenant improvements in this project will be drawn from the 03/04 CIP budget (346).

Agenda Item # 9

Prepared By:

Lt. Terrie Booten

Approved By:

Chief B. Cumming

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

APPROVE PURCHASE ORDERS FOR THE FURNISHINGS, FIXTURES, AND EQUIPMENT (FF&E) FOR THE NEW POLICE FACILITY

RECOMMENDED ACTION(S):

- 1) Authorize the City Manager to approve a Purchase Order in the amount of \$12,920.00 to Sirchie Fingerprint Laboratories Inc. for the Furniture, Fixtures and Equipment (FF&E) at the new police facility.

EXECUTIVE SUMMARY:

In July '03 the council awarded a building contract located at 16200 Vineyard Blvd. for the future Morgan Hill Police Department. The Council approved the purchasing price and the estimated FF&E to complete the project. As the final design phase is completed for the tenant improvements, some FF&E needs to be purchased immediately in order to be installed during construction.

In order to properly handle bio-hazardous materials such as blood, urine and semen, it is necessary for the department to purchase specialized equipment. The specialized equipment would include a specimen drying cabinet and a fuming hood to handle certain contaminated items. Such equipment will ensure proper evidence collection, provide safety for employees and maintain a chain of evidence for criminal prosecution in an effective and efficient manner.

This equipment is a deemed specialized to meet the state evidence requirements and recommendations by an auditor consultant. We wish to order the equipment now, have it delivered to the location for installation in order to meet the anticipated construction completion date.

This specialized equipment will take approximately 4 – 6 weeks for delivery.

FISCAL IMPACT:

The funds set aside for the FF&E in this project will be drawn from 346-86450-8049-288000.

Agenda Item # 10

Prepared By:

Lt. Terrie Booten

Approved By:

Chief B. Cumming

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

APPROVE WATSON FURNITURE AS SOLE SOURCE VENDOR FOR THE UPGRADE OF EXISTING FURNITURE FOR THE NEW POLICE FACILITY

RECOMMENDED ACTION(S):

- 1) Authorize the City Manager to approve a Purchase Order in the amount of \$22,268.65 to Watson Furniture for upgrades and expansion of the existing dispatch consoles for the new police facility (Portion of the previously approved FF&E Budget).

EXECUTIVE SUMMARY:

In July '03 the council authorized a lease/purchase of a building located at 16200 Vineyard Blvd. as the future Morgan Hill Police Department. The Council approved the purchase price and the estimated FF&E budget to complete the project. As the final design phase is completed and the facilities construction is underway the City is required to furnish their equipment as required to keep the project on schedule.

Since this equipment has a 90 day lead time, the Police Department is requesting this approval now to insure its' delivery and installation may be completed on time.

This equipment is deemed specialized and is currently used as consoles for the existing communications center. Watson Furniture is the manufacturer of this type of furniture. In order to retro fit our current consoles, we are required to order directly with the manufacturer. Per Watson Furniture, no other dealer can retro fit the existing console. Additional equipment will be needed and a third console purchased to complete the space plan and requirements that have been identified.

FISCAL IMPACT:

The funds set aside for the FF&E in this project will be drawn from CIP 346-86450-8049-288000. No additional funding is required.

Agenda Item # 11

Prepared By:

Lt. Terrie Booten

Approved By:

Chief B. Cumming

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *February 4, 2004*

APPROVE PURCHASE ORDERS FOR THE TENANT IMPROVEMENTS FOR THE NEW POLICE FACILITY – SECURITY SYSTEMS

RECOMMENDED ACTION(S):

1. Authorize the City Manager to approve a Purchase Order for the design, purchase and installation of card readers, closed circuit TV, new phone system, Fire and Security Alarm systems purchased for the tenant improvements at the new police facility.

Agenda Item # 12

Prepared By:

Lt. Terrie Booten

Approved By:

Chief B. Cumming

Submitted By:

City Manager

EXECUTIVE SUMMARY:

In July 2003 the council awarded a building contract located at 16200 Vineyard Blvd. for the future Morgan Hill Police Department. The Council also approved the purchase price and the estimated tenant improvements cost to complete the project. Construction has begun and equipment that is provided and installed by the vendor needs to be purchased immediately to avoid any delay in the projects completion.

Part of the security of the police facility, externally and internally, requires controlled entrances and exits to ensure the safety of all personnel and control of unauthorized personnel within the facility. As part of the booking process and facility security, closed circuit cameras at various locations are necessary to maintain secured areas.

During investigative interviews for criminal prosecutions, it is necessary to record and document these interviews as evidence. The District Attorney's office has requested that all agencies use digital recording devices. The fire alarm system is required by the state building code and needs to have the capabilities to tie into the current alarm system for the City.

Proposals will also include a new phone system which can integrate with our current provider, Verizon.

The RFP was issued to seven vendors who expressed interest in the project. A meeting about the scope of work was conducted at the job site. The proposals for the project are to be opened on January 30, 2004. An amended staff report will follow the bid opening.

After proposal evaluation by the Construction Manager and City staff, a recommendation will be made through the amended staff report for consideration by Council.

FISCAL IMPACT:

The funds set aside for the tenant improvements in this project will be drawn from the 03/04 CIP budget (346). No additional funding will be needed for this project.



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

Agenda Item # 13

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1652, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO SUBSECTIONS 18.76.130A8, 18.76.250C AND 18.76.250F OF CHAPTER 18.76 (SIGN CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ALLOWING CHANGEABLE COPY SIGNS FOR MOVIE THEATERS. (ZA-03-16: CITY OF MORGAN HILL-TEXT AMENDMENT/SIGN CODE)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1652, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On January 21, 2004, the City Council Introduced Ordinance No. 1652, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None .

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1652, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO SUBSECTIONS 18.76.130A8, 18.76.250C AND 18.76.250F OF CHAPTER 18.76 (SIGN CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ALLOWING CHANGEABLE COPY SIGNS FOR MOVIE THEATERS. (ZA-03-16: CITY OF MORGAN HILL-TEXT AMENDMENT/SIGN CODE).

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. INCORPORATING ZONING TEXT CHANGES BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a text amendment to the Planning and Land Use Code, Title 18 of the Morgan Hill Municipal Code, entitled "Sign Code Amendment Allowing Changeable-Copy Signs for Movie Theaters," as contained in the attached Exhibit "A."

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of January 2004, and was finally adopted at a regular meeting of said Council on the 4th Day of February 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1652, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 4th Day of February, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT “A”
(Ordinance Changes)
SIGN CODE AMENDMENT ALLOWING CHANGEABLE-COPY SIGNS FOR MOVIE
THEATERS

Section 18.76.130 Prohibited signs.

A. In addition to any sign not specifically in accordance with this chapter, the following signs are prohibited:

8. Rotating, revolving, flashing, animated, moving, glaring, changing, reflecting or blinking signs, or signs which appear to do any of the foregoing, whether such signs are located on the exterior of the premises or on the interior for viewing from the exterior, except that a changeable copy message board for automotive-related business adjacent to the South Valley Freeway and which meets the requirements of Section 18.76.075, is not a prohibited flashing sign; ***and changeable-copy signs for movie theaters, which meet the requirements of Section 18.76.250 is not a prohibited sign.***

Section 18.76.250 Commercial and industrial zone signs.

The following signs are permitted in the C-N neighborhood commercial, C-G general commercial, C-O administrative office, CS service commercial, HC highway commercial, TUD theme unit development, PUD planned unit development, M-L light industrial, M-G general industrial, M-C campus industrial, MO office industrial, and P-F public facilities zones, subject to community development director approval:

- A. Construction Signs. Same as subsection A of Section 18.76.240.
- B. Real Estate Signs. Same as subsection B of Section 18.76.240.
- C. Advertising Signs. On-site advertising signs and structures painted upon or affixed to any building, except in shopping centers, subject to the following conditions:
 1. The sign area shall not exceed one and one-half square feet of sign area for each lineal foot of building frontage for building attached signs. Where more than one business is located in a building or upon a single parcel of record, the frontage of each separate business building facing the right-of-way shall be considered as building frontage.
 2. Where business storefronts face onto a private drive or parking lot aisle, each business may be permitted up to a maximum of one and one-half square feet of sign area per each lineal foot of building frontage. Such signs shall be a part of a uniform sign program.
 3. ***Changeable-copy signs for movie theaters shall be permitted only to the extent that such signs shall conform with and are included in the total allowable sign area for the business. The maximum letter height for the changeable-copy signs for movie theaters shall not exceed twelve inches.***

F. Shopping Center Advertising Signs. On-site advertising signs in shopping centers, painted upon or affixed to any building, subject to the following conditions:

1. Sign Area. Sign area shall not exceed one and one half square feet of sign area per each lineal foot of building frontage.

a. Where more than one business is located in a building or upon a single parcel of record, the frontage of each separate business facing the right-of-way shall be considered as a building frontage.

b. The maximum letter height for building attached signs shall not exceed twenty four inches. Where a shopping center contains major tenants, each of which occupy a gross square footage of fourteen thousand square feet or more, the maximum letter height may be increased to forty eight inches.

c. ***Changeable-copy signs for movie theaters shall be permitted only to the extent that such signs shall conform with and are included in the total allowable sign area for the business. The maximum letter height for the changeable-copy signs for movie theaters shall not exceed twelve inches.***



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

Agenda Item # 14

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1653, NEW SERIES, AS AMENDED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.54.200 (Interim Use Permits) TO CHAPTER 18.54 (Condition and Temporary Use Permits) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PERMITS FOR INTERIM USES

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1653, New Series, as amended, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On January 21, 2004, the City Council Introduced Ordinance No. 1653, New Series, as amended, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1653, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.54.200(Interim Use Permits) TO CHAPTER 18.54 (Condition and Temporary Use Permits) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PERMITS FOR INTERIM USES

WHEREAS, non-profits provide a variety of needed support services to the Morgan Hill community, meeting social and economic needs which cannot be met by public agencies, particularly in these fiscally-constrained times; and,

WHEREAS, non-profits need administrative and operational space to carry out their mission; and,

WHEREAS, due to their reliance on contributions and fund-raising efforts, non-profits often have limited construction and operational budgets for their space needs; and,

WHEREAS, non-profits often move as necessary to find the lowest-cost space to accommodate their needs, often becoming temporary tenants for very limited time periods; and,

WHEREAS, the City Council of the City of Morgan Hill wishes to encourage the location of such non-profits in the downtown business district so that non-profits are integrated into the distinct professional, mercantile, and social fabric of the district, and provide social services to those individuals who may use downtown transit and other services; and,

WHEREAS, the City Council of the City of Morgan Hill believes that encouragement of non-profits to locate in the downtown business district includes recognition of the oft-times temporary nature of their space requirements, and their inability to make significant investment in on-site improvements; and,

WHEREAS, upon submission of sufficient information regarding the temporary nature of the location of the non-profit the City Council is willing to consider deferral of on-site improvements which do not create serious and immediate health and safety issues.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Definitions. Chapter 18.04 of Title 18 (Zoning) is hereby amended to include the following items:

18.04.232 Interim Basis

“Interim basis” means a temporary basis not to exceed three (3) years, and which is never intended, at any time during occupancy, to be a permanent occupancy.

18.04.321 Non-Profit Organization

“Non-profit organization” means an organization formed for a charitable or social welfare purpose, and which possesses non-profit status pursuant to Internal Revenue Code section 501(c)(3).

18.04.337 Off-site Improvements

“Off-site improvements” means those improvements required to be installed as a result of development, either in the form of new construction, tenant improvements, or remodeling, outside the boundaries of the parcel.

18.04.338 On-site Improvements

“On-site improvements” means those improvements required to be installed as a result of development, either in the form of new construction, tenant improvements, or remodeling, within the boundaries of the parcel. Examples of such improvements include the requirements of Chapters 18.24, 18.50, and 18.74 of the Municipal Code.

Section 2. Article III (Interim Use Permits) is hereby added to Chapter 18.54 (Conditional and Temporary Use Permits) of Title 18 (Zoning) is hereby amended to read as follows:

Article III. Interim Use Permits

- 18.54.200 Purpose of permits.**
- 18.54.210 Application—Contents.**
- 18.54.220 Application Process.**
- 18.54.230 Annual Review; Expiration.**

18.54.200 Purpose of permits. The purpose of Interim Use Permits is to allow non-profit entities which demonstrate the existence of a public benefit, and which lease space within the Central Commercial-Residential (CC-R) District on an interim basis, to defer certain and on-site improvements. Development impact fees shall not be deferred or waived under this article. Only non-profit entities that engage in uses which are permitted or conditionally permitted in the Central-Commercial-Residential (CC-R) district may apply for an interim as defined by this article.

18.54.210 Application—Contents.

An application for an interim use permit shall be made by the non-profit agency or agent thereof, on a form issued by the Community Development Department. An application shall be accompanied by the following information:

- A. Vicinity map;
- B. Site plan;
- C. Floor plan;
- D. Building elevations;
- E. Signing and landscape plan;
- F. A detailed list of on-site improvements required to be installed, the expected cost of each improvement, identification of which improvements are requested to be deferred, and the impact on health and safety from deferral of such improvements;
- G. Statement of proposed operations, including but not limited to:
 - 1. A general overview of services to be provided and staffing;
 - 2. The expected time for provision of such services;
 - 3. Expected vehicle and pedestrian traffic generated by the operation; and,
 - 4. The expected use of hazardous materials.
- H. A copy of the lease and all attached documents;
- I. A plan for exiting the site, including but not limited to:
 - 1. A time line for purchase and/or lease of a permanent site;
 - 2. The availability of economic resources sufficient to move to such alternate site, including but not limited to where such resources shall be received from and whether such resources are dependant on future fund-raising efforts;
 - 3. Plans for moving operations to such alternate site, including personnel responsible for administering such operations.
- J. Other materials as required by the Community Development Department.

18.54.220 Application Process.

- A. After an application is deemed complete by the Community Development Department, such application shall be routed to affected City departments for comments.
- B. Following receipt of such comments, if any, the application, with recommendation from the Community Development Department, shall be scheduled for Planning Commission hearing and action. Notice of such hearing shall be given to properties located within three hundred feet (300') of the proposed site.
- C. The Planning Commission shall evaluate the application for consistency with the following criteria, and shall then forward the application, with its evaluation, to the City Council for hearing and action. Notice of such hearing

shall be given to properties located within three hundred feet (300') of the proposed site.

1. The suitability of the site and building for the proposed use;
2. The impact of the use on the surrounding properties, and on the CC-R District in general.
3. The impact of the use on traffic circulation and planned capacity of the street system.
4. The compatibility of the use and design with adjacent uses within the district and its surroundings;
5. Whether the use will adversely affect the peace, health, safety, morals or welfare of persons residing or working in the vicinity of the use;
6. Whether the use will impair the utility or value of property of other persons located in the vicinity of the site;
7. The applicability and conformity of the use with provisions of Chapter 8.40, hazardous materials, as existing or hereafter amended;
8. The viability of the exit plan;
9. Whether deferral of any improvements presents a serious threat to the public health, safety and welfare, except that on-site standards shall meet minimum public safety requirements; and to what extent; and,
10. Whether the use will provide a public benefit to the City and its citizens.

D. The City Council will evaluate the application and determine whether a public benefit exists. The City Council may approve, approve with conditions, or deny the application. The Council may require a performance bond to ensure the restoration and clean up of the site.

18.54.230 Annual Review; Expiration.

A. On or before the anniversary date of commencement of use, the Permit Holder shall provide the Community Development Department with a status report as to the items listed in Section 18.54.220. Interim Use Permits shall be reviewed annually by the Community Development Department for compliance with all conditions imposed therein. Should the Department find any conditions of the Permit unsatisfied, the non-profit shall be notified thereof, and shall be given thirty days' notice to correct such use permit violations. Notice of such violations which constitute a threat to the public health and safety shall require immediate correction. Failure to correct the violations within such period of time shall result in action to revoke the Permit subject to a public hearing before the City Council.

B. Interim Use Permits shall expire whenever the non-profit ceases operations, moves from the site, or three years have elapsed from first occupancy of the site, whichever occurs first. Interim Use Permits are not renewable or extendable.

Section 2. **Severability.** Should any provision of this ordinance be deemed unconstitutional or

unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced, as amended, at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of January 2004, and was finally adopted at a regular meeting of said Council on the 4th Day of February 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1653, New Series, as amended, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 4th Day of February, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JANUARY 14, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:17 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor Kennedy, Einar Anderson led the Pledge of Allegiance.

PUBLIC COMMENT

Einar Anderson addressed the need for a new library in Morgan Hill. He thanked Mayor Kennedy, the City Council, and staff for their continued contribution in planning for a new library and for helping in the presentation of proposals at the State level for funding from the Library Bond Act. He said that unfortunately, these efforts have not produced the desired results to date. If the City does not receive an award of funding in the 3rd bond application, the need still remains. He noted that the existing library was built in 1974 and served a population of 7,500. Now, the City has a population of over 42,000 with an expected population of 53,000 in 2020. He did not believe that the existing facility would accommodate future needs. He noted that the current library has 50% of the population with library cards, averaging approximately 1,000 patrons per day. Many times the library is so crowded that you cannot use a computer or find a place to sit. He felt that Morgan Hill will fall behind other cities in the County if the City does not address these needs. He identified the new libraries that have been built within the County and felt that there were ways to achieve the construction of a new library. He requested that the Council explore alternative funding(s) to construct a new library such as reallocation of RDA funds or finding other resources in order to be able to satisfy the need for a new library.

Roger Knopf addressed the library facility and funding for continued library operation and staffing. He said that he has a sense that the City is coming to the issue of needing to prioritize funding sources available for several public facilities. He recommended that the library be the first choice for funding as opposed to some of the other choices before the City. He stated that he has always been a supporter of public education and felt that a community library is an important element of education for all ages. He stated that he strongly supports the construction of a new library. Regarding funding for the operation of a library, whether a new library or an existing library, the County has a tax that will be expiring a year from now. He indicated that the County has placed Measure B on the March 2, 2004 ballot that would

provide additional funding over a seven-year period for the continuation of the present tax to support the operation and staffing at about the current level. If the current tax is not approved for extension in March, the funding source will go away; resulting in the library operating hours decreasing from 54-hours per week to approximately 30-hours per week. This would result in the operation of a new or existing library facility at 55% where the City is today. As the co-chair of the campaign for Measure B with Jeanne Gregg, he invited everyone in the community to a campaign kickoff to be held on Saturday, January 17 at 1 p.m. at the Morgan Hill House.

Jeanne Gregg, chairperson for the Library Commission and co-chair of the tax campaign for Measure B, stated that should the library bond measure not pass, the library's hours would be reduced from 54-hours per week to 30-32 hours per week. She said that this is a big reduction and that it would take a lot of work on everyone's part to get this measure passed. She thanked Mayor Kennedy and Council Member Tate for their sincere regard for the whole issue of the library as they are concerned about the library and want to do whatever is possible to get an improved facility. She stated that she just spoke with Nancy Howe, supervisor of the Morgan Hill Library, who advised her that there is only one library in the entire Morgan Hill School District. Therefore, the City's library serves de facto as a school library. She did not believe that there was enough library service in the school system to teach students how to use data base research. She felt that it was important to realize that the library is not only a recreational facility but serves serious purposes.

No further comments were offered.

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Item 1, as follows:*

1. **EMPLOYMENT AGREEMENT FOR INTERIM APPOINTMENT OF CHIEF OF POLICE**

Action: ***Authorized** the City Manager to Execute an Agreement in An Amount Not to Exceed \$72,000 for the Appointment of Bruce Cumming as Interim Police Chief.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 7:28 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

Agenda Item # 16

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1651, NEW SERIES, AS AMENDED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1599, N.S., AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-01-07: SHAFER – BAMDAD TO INCORPORATE A NINE-MONTH EXTENSION OF TIME FOR THE SEVEN, PHASE I UNITS AND A FOUR-MONTH EXTENSION OF TIME FOR THE SIX, PHASE II UNITS OF THE 15-UNIT DEVELOPMENT. (APN 728-10-005)/(DAA-02-07: SHAFER – BAMDAD)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1651, New Series, as Amended, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On January 21, 2004, the City Council Introduced Ordinance No. 1651, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Kennedy.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1651, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1599, N.S., AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-01-07: SHAFER – BAMDAD TO INCORPORATE A ONE-YEAR EXTENSION OF TIME FOR THE SEVEN, PHASE I UNITS AND A ONE-YEAR EXTENSION OF TIME FOR THE EIGHT, PHASE II UNITS OF THE 15-UNIT DEVELOPMENT. (APN 728-10-005)/(DAA-02-07: SHAFER – BAMDAD)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 02-36, adopted May 14, 2002, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-01-07: Shafer - Bamdad	7 units for FY 2003-04
	8 units for FY 2004-05

SECTION 4. References are hereby made to a certain Agreement on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. The delay experienced by this project was due to excess time in processing of the improvement plans. The delays are not a result of the developer's inaction and therefore, the Council hereby grants a one-year Exception to Loss of Building Allocation for the seven, Phase I units, extending the deadline to commence construction from June 30, 2004 to June 30, 2005, and a one-year extension of time for the eight, Phase II units from June 30, 2005 to June 30, 2006.

SECTION 10. AMENDMENT TO PARAGRAPH 14. The Council hereby approves an amendment to Paragraph 14(n)(iv) of the development agreement, as follows:

“Provide dedication and full street improvements across the Hill Road frontage of the Hufton property located at 17110 Rosetta Drive, including street widening, curb and gutter, *or provide alternate Measure P commitment subject to the review and approval of the Public Works Department. Alternate Measure P commitment(s) shall be of a Measure P point value and monetary value equal to or greater than the Hill Road frontage improvements described above.*”

SECTION 11. Exhibit B of the development agreement is amended to read as follows:

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-01-07: SHAFER - BAMDAD
FY 2003-2004 (7 UNITS), FY 2004-2005 (8 UNITS)**

- | | |
|---|---|
| I. SUBDIVISION AND ZONING APPLICATIONS | |
| Applications Filed: | August 26, 2002 |
|
II. SITE REVIEW APPLICATION | |
| Application Filed: | December 15, 2002 |
|
III. FINAL MAP SUBMITTAL | |
| Map, Improvements Agreement and Bonds: | March 15, 2003 |
|
IV. BUILDING PERMIT SUBMITTAL | |
| Submit plans to Building Division for plan check: | September 30, 2003 September 30, 2004 |
|
V. BUILDING PERMITS | |
| Obtain Building Permits: | |
| FY 2003-04 (7 units) | March 31, 2004 March 31, 2005 |
| FY 2004-05 (8 units) | March 31, 2005 March 31, 2006 |
|
Commence Construction: | |
| FY 2003-04 (7 units) | June 30, 2004 June 30, 2005 |
| FY 2004-05 (8 units) | June 30, 2005 June 30, 2006 |

Failure to obtain building permits and commence construction by the date listed in Section V. above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit under Sections III. and IV., respectively, two (2) or more months beyond the filing dates listed above, shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above, Sections III. and IV., respectively, may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least seven (7) dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced, as amended, at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of January 2004, and was finally adopted at a regular meeting of said Council on the 4th Day of February 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1651, New Series, as amended, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 4th Day of February, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
JOINT SPECIAL CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JANUARY 16, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 8:20 a.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Chang (arrived at 8:30 a.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agency Secretary Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

City Council and Redevelopment Agency Action

1) GOAL SETTING WORKSHOP

The Council/Agency Board reviewed the accomplishments of the past year. The Council/Agency Board individually identified proposed goals for 2004.

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

No items were identified.

ADJOURNMENT

Mayor/Chairman Kennedy adjourned the meeting at 5:00 p.m. to Saturday, January 17, 2004, 8:00 a.m. to continue discussion of proposed 2004-goals.

MINUTES RECORDED PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JANUARY 17, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 8:15 a.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Chang (arrived at 8:30 a.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agency Secretary Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

City Council and Redevelopment Agency Action

1) GOAL SETTING WORKSHOP

The Council/Agency Board continued their discussion of proposed goals for 2004. The Council/Agency Board tentatively established proposed 2004-goals in the area of City budget, Economic Development, Library, and other topics contained in the 2003-adopted goals. Staff was asked to draft proposed goal statements to be reviewed and adopted by the Council at the February 18, 2004 Council meeting.

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

No items were identified.

ADJOURNMENT

There being no further business Mayor/Chairman Kennedy adjourned the meeting at 12:30 p.m.

MINUTES RECORDED PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JANUARY 21, 2004**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:03 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8
Property: 215 Tennant Avenue, APN: 817-04-002
Negotiating Parties:
 For City: City Manager, Director of Public Works, City Attorney, and Attorney
 Gale Connor
 For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin
Closed Session Topic/Under Negotiation: Price and Terms of Payment

3.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8
Property: 95 Tennant Avenue, APN: 817-04-006
Negotiating Parties:
 For City: City Manager, Director of Public Works, City Attorney, and Attorney
 Gale Connor
 For Property Owners: Marko and Klara Gera
Closed Session Topic/Under Negotiation: Price and Terms of Payment

4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8
Property:	145 Tennant Avenue, APN: 817-04-008
Negotiating Parties:	
For City:	City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
For Property Owners:	Joseph Hernandez, as trustee; et al
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:05 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, City Treasurer Mike Roorda led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Tate stated that he has been working on the library subcommittee but that he would not report on this subcommittee as it will be discussed later this evening under a separate agenda item. He also serves on the economic subcommittee. He noted that there is also an item on the agenda later this evening and that he will address the subcommittee at that time. He indicated that the Council held a goal setting retreat this past Friday and Saturday, indicating that it was a productive session. He said that there was a lot of concentration on the City's budget. He felt that everyone understands that the budget is one of the biggest concerns at any level of government today. He stated that the City is fortunate to be in a position that it has some reserves and that it was prudent in terms of building these

reserves. He felt that the Council is prudent in attempting to reach a sustainable balanced budget by the year 2007-2008. He indicated that the City has the luxury of using the City's reserves until that time but that the Council wants to get to a point where the City is not spending more than is being taken in. In order to balance a budget that is not balanced you either have to cut your spending or increase your income. He felt that the City has a good handle in terms of good forecasts and approaches that the Council is looking at to achieve a balanced budget. He said that cities and regional agencies have heard the City Manager's reports on some of the machinations that the City has gone through with the State in terms of backfill of the vehicle license fee (VLF), only to be taken away and then backfilled again. After the State reinstated the backfill, they went back to what it did approximately 10 years ago in terms of shifting education money that would come back to local governments. He stated that the City does not know what will happen in the election of March 2004 in terms of the \$15 billion bond the State is asking for. However, if the State does not get this bond measure passed, cities are fearful that the State will come looking for more from cities. He stated that the Council is working carefully and cautiously with staff to get to a responsible budget position. He cautioned that the Council does not have control of the actions that take place at the State level.

CITY MANAGER REPORT

City Manager Tewes reported that the Council directed that staff develop the tentative policy decision made at the retreat and bring it back to the Council for formal consideration at the February 18, 2004 meeting. At that time, staff will have the proposed goals that the Council discussed and will have the opportunity to formally adopt these goals as well as adopting a set of principals/guidelines to help staff as it prepares the budget for the succeeding year. He indicated that another prudent decision the Council made was to direct staff to test all domestic water wells for the presence of the contaminant perchlorate on a monthly basis. He reported that this month, none of the City's domestic wells had any detectible levels of perchlorate.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

OTHER REPORTS

City Treasurer Roorda presented the Quarterly Treasurer's Report. He reported on the state of the City's general fund, including the challenging decisions that will need to be made by the City the next few years to reach a balanced budget. He indicated that the City's revenue does not come in on an even fashion over the course of the year but tends to come in at an increasing level over the course of the year. He said that two of the largest contributors to the revenue source for the City are property taxes and sales tax. He indicated that the sales tax has not been as generous this year as it was in prior years. However, in the property tax area, the City has seen more increases than what was budgeted. Therefore, these two taxes offset each other's decline. In the motor vehicle fee area, the City has been in an environment where it started the year without the backfill from the State for the vehicle in lieu fees. There is a portion of this that will come back to the City, not in this current year, but in the next couple of years. Although the starting point appears to be a little bleak, once you understand some of the

components and where the City is, the City will see a much better situation in relation to the budget by the end of the year. In the expense area, he stated that City staff has done some work to reduce expenses below the budgeted levels. However, he noted that there is still some growth over the last year, but at a modest rate (e.g., less than 2%). He felt that with continued efforts, the City may see some additional benefits and close the gap between what is being seen in terms of revenue which is expected to improve from this point forward and the expense levels if they were to decline over the course of the year. This would place the City in a better position by the end of the year.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Bruce Tichinin stated that in understanding the instructions he received from the City Attorney today about how he should proceed to try and accomplish what he would like to accomplish this evening, he was in attendance to request that the Council schedule reconsideration of appeal application AP-03-07: West Main-Vierra for the Council's February 18 meeting. He stated that he is making this request based on a couple of important developments that have occurred since the last hearing. He stated that he spoke with Ms. Bernadini and that she has agreed to call a meeting of her neighbors to consider an alternative development plan. This would be presented to them to comply with City staff's interpretation of where the 500 foot contour line goes in the hope that they would join in the request for reconsideration. He said that the alternative development plan would entail less expensive homes on smaller lots constructed closer to their residences, the opposite of the underlying concerns that caused the neighbors to speak to the Council last week. He indicated that although Council Member Carr was kind enough to suggest, and the Council allowed him the opportunity to respond to City Attorney Leichter's points, he stated that in retrospect, he was stunned by the force of the points. He did not believe that they respond satisfactorily. However, two cases have come to mind that he would like to present to the City Attorney and the Council. These two cases will attempt to answer the issues raised by City Attorney Leichter and indicated that it would be appropriate to interpret the location of the general plan line as a matter of law where he suggests that it is. These are the issues he would like the Council to consider.

No further comments were offered.

Council Member Carr indicated that he does not have an objection to rehearing the appeal request but that his concern is that he is not available for the Council's February 4 meeting, noting that another Council Member stepped down from this issue. This would result in the Council being down two members to listen to the issue. He suggested calendaring reconsideration of the appeal application to the February 18 meeting. If the Council is going to schedule the matter, this may give the Council the opportunity to seek some planning commission thoughts on this as well.

Action: *Mayor Kennedy requested that staff agendize appeal application AP-03-07: West Main-Vierra for reconsideration at a future meeting. Staff to work with Mr. Tichinin and the Council's schedule to determine a hearing date.*

City Manager Tewes informed the Council that one of the issues that staff will be discussing in the intervening weeks with Mr. Tichinin is the affect on the current Measure P competition. He noted that Mr. Tichinin was anxious to have his appeal heard and decided upon so that he would know whether his Measure P application would be scored. He indicated that staff is in the process of scoring the applications to bring them before the Planning Commission. He stated that there was a suggestion that there might be a possible amendment to the application which would require resubmittal and rescoring. When the Council discusses this, staff will bring the implications of the Measure P process to determine the sequences with the other activities the Planning Commission is engaged in.

City Council Action

CONSENT CALENDAR:

Council Member Chang requested that item 4 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 2 and 5-14, as follows:*

1. **DECEMBER 2003 CITY FINANCE AND INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.
2. **AMENDMENT TO PLANNING DIVISION CONTRACT SERVICES BUDGET FOR UNANTICIPATED ENVIRONMENTAL CONSULTING SERVICES**
Action: **Approved** the Appropriation of \$7,000 from the Community Development Fund Balance (206) to Fund Unanticipated Environmental Consulting Services.
3. **AMEND AGREEMENT WITH THE STROMBOTNE LAW FIRM**
Action: **Authorized** the City Manager to Execute an Amendment to Agreement with the Strombotne Law Firm.
5. **AQUATICS CENTER PROJECT – DECEMBER CONSTRUCTION PROGRESS REPORT**
Action: **Information Only.**
6. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9234, CAPRIANO PHASE I – Resolution No. 5763**
Action: 1) **Adopted** Resolution No. 5763, Accepting the Subdivision Improvements Included in Tract 9234, Commonly Known as Capriano Phase I; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
7. **ACCEPTANCE OF THE CONSTRUCTION OF BUTTERFIELD BOULEVARD – PHASE IV IMPROVEMENTS PROJECT**

Action: 1) **Accepted** as Complete the Construction of Butterfield Boulevard – Phase IV Improvements Project in the Final Amount of \$3,609,164; 2) **Approved** an Amendment to the Professional Services Agreement with MH Engineering for Design and Survey of Butterfield Boulevard Extension Project, Increasing the Approved Amount From \$172,957 to \$201,756; and 3) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

8. **APPROVAL OF IMPROVEMENT AGREEMENT FOR 1295 EAST DUNNE AVENUE (APN 728-17-023)**

Action: 1) **Approved** the Improvement Agreement with Arch Design, Inc.; and 2) **Authorized** the City Manager to Sign the Agreement on Behalf of the City.

9. **AMENDMENT TO ANNUAL CONTRACT WITH MONTEREY COUNTY LABORATORY FOR WATER SAMPLING AND ANALYSIS**

Action: 1) **Approved** the Amendment to the Agreement Dated 2003 with Monterey County Laboratory to Increase the Maximum Compensation for Fiscal Year 2003-2004 from \$50,000 to \$115,000; and 2) **Approved** the Appropriation of \$50,000 from the Unappropriated Water Fund Balance (650) to Fund Unanticipated Perchlorate Testing and EPA Water Quality Testing.

10. **ADOPT ORDINANCE NO. 1644, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1644, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1310, NEW SERIES WHICH PREZONED 9.45 ACRES LOCATED ON THE WEST SIDE OF DEWITT AVENUE NORTH OF SPRING AVENUE FROM COUNTY HS, HILLSIDE TO CITY R-1 (12000)/SINGLE FAMILY RESIDENTIAL PLANNED DEVELOPMENT. THE AMENDMENT INCLUDES THE ADOPTION OF A PRECISE DEVELOPMENT PLAN FOR THE 21-LOT, 9.45-ACRE RESIDENTIAL PLANNED DEVELOPMENT (APNs 773-08-012 through -016).**

11. **ADOPT ORDINANCE NO. 1645, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1645, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 27.1 ACRES, FROM COUNTY A-20 TO PUBLIC FACILITIES FOR APNS 725-01-012 & 013 AND 0.7 ACRES FROM COUNTY A-20 TO R1-7,000 FOR APN 725-01-021 FOR APPLICATION ZA-03-17: BURNETT-MHUSD SOBRATO HIGH SCHOOL.**

12. **ADOPT ORDINANCE NO. 1646, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1646, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT**

AGREEMENT, DA 03-10 FOR MP 02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-36-001, 010).

13. ADOPT ORDINANCE NO. 1647, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1647, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1597, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-26: MALAGUERRA-ANSUINI/MANCIAS TO INCORPORATE A NINE-MONTH EXTENSION OF TIME FOR SIX, PHASE II UNITS OF THE 15-UNIT DEVELOPMENT. (APNs 728-35-016 & -017)/(DAA-00-05: MALAGUERRA – MANCIAS).

14. ADOPT ORDINANCE NO. 1648, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1648, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1622, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE - SINGH TO INCORPORATE A THREE-MONTH EXTENSION OF TIME FOR THE FOUR-UNIT PROJECT. (APN 764-23-054)/(DAA-00-08: BERKSHIRE - SINGH).

4. THE USA PATRIOT ACT

Council Member Chang stated that she considers the Act to be a Federal issue. She stated that she would not object to any action the Council may be taking on this item but that she would be abstaining from the item.

Council Member Carr indicated that the Legislative Subcommittee discussed the USA Patriot Act for a long time. He indicated that this is a law that Congress passed two years ago and signed by the President that is up for reauthorization this coming year. The law affects how law enforcement conducted some of its activities. He said that the Legislative Subcommittee is recommending that the Mayor execute and send correspondence to the United States Attorney General and the California Congressional Delegation regarding the City's concern that it has over the Patriot Act. He indicated that the Legislative Subcommittee raised the issue of whether it was the City's place to get into Federal business or whether the City should spend time doing so. The Legislative Subcommittee specifically looked at ways that the Patriot Act affects City operations. The Legislative Subcommittee's specific objections to the Patriot Act relates to in the way it affects City operations.

Mayor Pro Tempore Sellers said that the City, as a rule, abstains from many state and federal issues that do not have a direct impact on the City. When the City was approached by citizens requesting that this Act be considered, the first reaction was whether there were any impacts to the City. He stated that

several cities in Santa Clara County have acted on this issue as well. He said that there was significant legal background that has gone into the Act that the Legislative Subcommittee took a look at. The Legislative Subcommittee believes that there are direct impacts, particularly in terms of the City's administration of law enforcement and the way it would treat its citizens. This was a matter of having the City on record, as a community, that it has concerns of basic first amendment rights. He said that it is the duty of individuals, as well as collectively as a City, to stand up and state that the very things that we stand for as Americans are defended and dealt with at a local level as well. After careful consideration, the Legislative Subcommittee felt that it was a City matter and decided to bring the discussion of the Act to the Council for consideration.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Authorized** the Mayor to Execute and Send Correspondence to the United States Attorney General, with a Copy to the California Congressional Delegation, Regarding Concerns About the USA Patriot Act (PL 107-56).*

City Council Action (continued)

CONSENT CALENDAR:

Council Member Chang requested that items 15 and 16 and Council Member Carr requested that item 17 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 15 and 16 , as follows:*

15. ADOPT ORDINANCE NO. 1649, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1649, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A .30 ACRE AREA OF APN 726-24-023 CHANGING THE ZONING DESIGNATION FROM R-3 TO R-2/RPD AND APPROVAL OF A RESIDENTIAL PLANNED DEVELOPMENT OVERLAY AND PRECISE DEVELOPMENT PLAN FOR A 16 UNIT R-2 (3,500)/RPD MULTI FAMILY LOW DEVELOPMENT LOCATED ON THE EAST SIDE OF MCLAUGHLIN AVENUE, NORTH OF CENTRAL AVE. (APNS 726-24-006, 007, 022, 023 & 024).***

16. ADOPT ORDINANCE NO. 1650, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1650, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY***

***COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT
AGREEMENT DA-03-02: MCLAUGHLIN-JONES (APNS 726-24-006 & 007).***

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Item 17, as follows:*

17. RESULTS OF PRELIMINARY TRAFFIC CALMING STUDIES AT FOUR CITY LOCATIONS

Action: **Information Only** *at This Time, Pending Approval of Neighborhood Traffic Management Policy.*

Mayor Kennedy opened the floor to public comment

Mac Rossi stated that he had the opportunity to speak with the City's consultant. He stated that it was his belief that Jackson Oaks Drive was an incomplete study. He provided the Council with a copy of the letter he forwarded to the public works department. He said that while the other three studies had boundaries in terms of street to street, Jackson Oaks was defined as Jackson Oaks Drive. Wherever the consultant had recommendations for barriers, they only gave a report for half of the full street. He wanted to bring this concern to the Council's attention before the City pays the consultant.

Mayor Kennedy stated that although the Council approved proceeding with the studies, the Council will follow through with Mr. Rossi's recommendation.

No further comments were offered.

City Manager Tewes indicated that staff would report back to the Council and respond to Mr. Rossi's letter.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 18 and 19, as follows:*

18. DECEMBER 2003 RDA FINANCE AND INVESTMENT REPORT

Action: **Accepted** and **Filed** Report.

19. ANNUAL REDEVELOPMENT REPORTS FOR FISCAL YEAR 2002-2003

Action: **Filed** the 2002-2003 Redevelopment Agency's Annual Report of Financial Transactions, Housing Annual Report of Housing Activity, and Property Report.

Council/Agency Member Tate inquired whether the Council/Agency Board would be prioritizing the items on the agenda according to the audience in attendance as this could be a very long agenda.

Mayor/Chairman Kennedy indicated that there have been some requests to prioritize agenda items. He recommended that the water rate discussions be moved to later in the agenda.

Mayor Pro Tempore/Vice-chair Sellers recommended that the water rates remain where placed on the agenda. However, under other business, the Council may wish to move the library agenda item up ahead of agenda item 27.

Council/Agency Member Tate recommended that item 32 also be moved up.

City Council Action

PUBLIC HEARINGS:

20. REFINANCING FEE – Resolution No. 5764

Director of Finance Dilles presented the staff report, indicating that the Council has adopted a schedule of fees with a general approach for full cost recovery. He stated that it would be appropriate to add a new fee to the list to be known as the “refinancing fee.” This fee would be for City staff time to process documentation to allow for a third party to refinance their outside loan and still maintain certain benefits that they might be receiving from the City or Redevelopment Agency (e.g., loan from the City or subordinate below market rate resale agreements to an outside loan).

Council Member Carr inquired whether there are any limits to the number of times someone who has a loan or BMR can refinance. He said that establishing limits may be helpful to the City. He said that he is aware that the County and other programs establish limits before you give up this benefit where you pay the benefit back when you refinance.

Director of Business Assistance and Housing Services Toy said that for the BMR program, it makes it more affordable for the homeowner. There is no dead of trust to the City. Therefore, there is nothing that can be returned. He said that the City could consider that if there is a refinancing request and the City has a rehab loan, the property owner could refinance so that the money can be recycled sooner.

Council Member Carr felt that Mr. Toy’s suggestion may be worth taking a look at.

Mayor Pro Tempore Sellers noted that staff indicated the costs would be \$135 plus CPI plus staff overtime. He did not believe that there would be staff costs associated with refinancing.

Director of Finance Dilles informed the Council that individuals may be under a time pressure and come to the City on a short time frame. They ask staff to push through the refinancing. On occasion, staff has found that they have to stay after hours and work overtime to be able to accommodate assisting

individuals. He said that the annual cost of living increase is consistent with most city fees where there is an annual escalator.

Mayor Pro Tempore Sellers felt that it would be appropriate to charge this fee when there are extenuating circumstances and an individual wants the City to fast track services.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5764*

21. FEE IMPLEMENTING CITYWIDE BURROWING OWL HABITAT MITIGATION PLAN – Resolution No. 5765

Director of Finance Dilles presented the staff report, indicating that this would be another new fee that City staff is recommending Council approval. This fee would cover the cost for implementing the City-wide burrowing owl habitat mitigation plan adopted by the Council in June 2003. He said that there are certain costs necessary to implement this plan. The proposed fee of \$149 for each new residential unit or \$1,044 per acre for non residential use would provide for full cost recover for implementing the plan.

Mayor Kennedy opened the public hearing.

Tom Seitzler, Countryside Villas Homeowners Association, suggested that the Council table this item in order to allow City Treasurer Roorda's input on the budget deficit. He agreed that the City should take care of its environment and habitat. However, the cost of doing so, at this time, appears a little steep as a homeowner and potential taxpayer. He did not believe that it was prudent to implement the fee at a time when the economy is as tight as it is.

City Attorney Leichter indicated that this is the last step of what has been a very long process which started with an amendment to the Redevelopment Plan. It was found that this amendment had impacts on the burrowing owl and that part of the mitigation plan, adopted by the Council, committed the City to a burrowing owl mitigation plan. She indicated that this plan took several years and a lawsuit to develop and resolve and that the mitigation plan was eventually adopted. It was contemplated that fees would be imposed to pay for the implementation of the plan. Therefore, this is the last step in that analysis. If the City does not impose fees, the City will still have to impose the plan and the taxpayers will have to pay for it. By imposing the fee, it will be the user that pays for it and not the general tax payers of Morgan Hill. If the City does not implement the fees, the City would have to pay through the expenditure of general fund monies.

Mayor Kennedy clarified that this fee would be imposed on new development and that existing property owners would not be faced with the fee.

City Manager Tewes said that this plan was developed over a series of years with the assistance of an advisory group that included representatives of residential and commercial development who are recommending the fees.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers felt that it was important for the public to know that it is a matter of who pays, not if the city pays. He indicated that this mitigation plan has been mandated. In the development of the plan, the City came up with a solution so that the individuals who are paying the fees are the ones who are having the direct impact on the habitat as opposed to tax payers. He indicated that this has been a long process but that it is easy for the Council to approve this evening as it is making sure that the individuals who created the impact are the ones who pay.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5765*

22. WATER RATES

Director of Finance Dilles presented the staff report, indicating that on November 19 and December 10, 2003, the Council considered staff reports regarding water rates and the necessity to change them. The Council directed staff to return this evening with a public hearing and to contact representatives from some of the larger irrigation users in town as part of the proposed rate structures. He indicated that staff would be discussing two subjects in terms of water rates: 1) perchlorate related surcharges to all existing water rates; and 2) a 50% increase to the upper tiered level of water usage for large irrigation users. He indicated that staff considered the feedback and the direction provided by the Council and conducted additional research. Staff is returning to the Council with some modifications to the previous proposal. He indicated that staff heard from the Council that the City should consider moving away from the percentage reserves that have been established by Council policy following the recommendation of the outside rate consultant. Staff calculated three different percentages and that this calculated into certain dollar amounts. As staff proposed and implemented rate increases and cost increases, these reserve levels need to be raised in order to keep up with the correct percentage. He said that when staff describes the revenue requirements, it is in terms of the amount of money the City needs in order to recover all water related costs from now through 2004. Staff has restated the reserves back to the dollar amounts that the consultant originally recommended. By doing so, staff has reduced the proposed surcharges from 6% to 5%. He indicated that four rate increases are still proposed: April 2004, January 2005, January 2006, and January 2007. Staff also described the surcharges as perchlorate related charges rather than just rate increases. He stated that the resolution before the Council calls for the surcharge and mandates that the City spends this money only on perchlorate related costs. In addition, this money is to be returned to the City's water customers if it is not needed for perchlorate related costs. He indicated that there is a current requirement that the finance director, by every September 30, report back to the City Council whether or not the City needs a 2% rate increase. If not needed, the City would back off from this increase. Staff has now expanded this concept to state that at the same time, the finance director will report on the necessity of implementing and continuing these rate surcharges. By each September 30, there would be a determination of whether there is enough

money for perchlorate related charges collected from the community to cover the anticipated related perchlorate costs through the following four years. If there are enough funds, the City would proceed to rebate money back to the water rate payers through across the board rate reduction. If there is insufficient money to pay for these anticipated costs, the rate surcharge would remain in place and the next rate increase would be implemented.

Finance Director Dilles displayed updated charts and graphs relating to revenue requirements in order to pay for all water costs between now and June 2007. He indicated that the City needs to generate \$2.7 million in proposed rate surcharges. Also, displayed were fund balance analyses with and without the rate surcharge. He explained the reasons for the financing shortfalls (e.g., less water being sold, paying more pump tax, increase in operating cost). He informed the Council that the Water District has indicated that their staff may propose an additional increase to cover the Water District's perchlorate related costs in South County. He indicated that these potential increases are not included in these numbers.

Council Member Tate felt that the rate payers would not see or understand a rebate surcharge for perchlorate once the City gets reimbursed for the perchlorate related costs. He felt that there should be a way to account for this cost/reimbursement to the City's customers.

Mr. Dilles indicated that staff could show the surcharge as a separate line item and that the City could show the opposite on the water bill that would show the rebate to the customer. The customer would see their regular rate and see the credit or reduction as a separate line item. He said that the City has an accounting system that staff can track as the money comes in to be spent on perchlorate and what the net balance is, reporting this information.

Mayor Pro Tempore Sellers said that there is no guarantee that the City would be repaid for perchlorate related costs by Olin Corporation. If this is the case, it would be prudent to dip into the reserves and not increase rates at all.

Mr. Dilles said that the problem with dipping into the City's reserves is that the City does not know when it will receive reimbursement for perchlorate cleanup. He stated that staff is not recommending that perchlorate fees be paid from the City's reserves, but is recommending the surcharge.

Mr. Dilles indicated that staff spoke to the Council about a multi tiered system for irrigation users and that the Council directed staff to return with a simplified tiered alternative and to look at different classes of customers in terms of irrigation. He informed the Council that staff excluded governmental agencies and left their rate structures alone. Staff created another class consisting of commercial, industrial and homeowners associations (HOA) which tend to be the other large irrigation users. He said that staff looked at the median usage during the month of August 2003, identifying who was far over the median. Staff found the City's 10-14 high irrigation users. Staff calculated the amounts of water used for each sized meter (1", 1.5" and 2" meters), and displayed the proposed irrigation rates for commercial, industrial and homeowners associations. He indicated that staff met with 7 of the high end water users last week. These users state that it would be expensive to re landscape for low water usage. He stated that the community needs to reduce its water usage so that the City can manage its water

supply; particularly as it relates to perchlorate and the risk that the City faces when all wells are not on line. The City also needs to make sure that there is enough water to fight fires and meet all of its long term goals with water management. He said that it comes down to a decision for the businesses but that staff is hearing from some of the customers that there is a financial burden being placed upon them. In relation to homeowners association, it was stated that it was not fair to look at creating an upper tier for HOAs who have a meter that serves a retention pond, a common area, and front lawns. Some of the HOAs are stating that if you take the irrigation readings and divide that by the number of units that exist, you would not get a large number. He said that it would be a lot of work to try and match up what the HOAs are paying for outside usage, what the homeowner is paying for the inside usage and try to put these together to make some sense. He said that it may be, in some cases that they pay less but in other cases they are not. He said that HOAs were established with an outside irrigation meter and that this is serving a large area. He stated that it is different than comparing it to a series of single family homes that are not in an HOA. Staff also heard from a HOA representative that the perchlorate costs should be debt financed so that it would be paid back later and tied in somehow when Olin pays the City. He stated that it would be possible to finance part of this (e.g., drilling of well) but not the operations cost. The issue is that you increase the City's costs with debt financing and that it would be the same rate payers that would be paying it now or later, realizing that Olin will ultimately cover this cost. Therefore, staff would not support this suggestion. He stated that some of the customers would like to sit down with City staff and talk about some of the options they have and how the City can help them in terms of ripping out sod and replacing it with something else. He stated that staff would be willing to assist, procedurally, as well as with ideas. Staff pointed out that the Water District has various programs that help large water users reduce their water usage.

Mayor Kennedy opened the public hearing.

Tom Seitzler indicated that Mr. Dilles was very helpful in communicating information about the water bill. He stated that he read through the resolution and felt that it appears more of an increase versus a surcharge. He referred to Section 3 of the resolution. He felt that this section indicates that staff would come before the Council for an increase but not for a review to see if the previous rates should be left in place. Therefore, it would be a rate increase versus a surcharge. He felt that the surcharge would tend to go away after a period of time. He requested that the Council take a look at this because the Council would be voting for what may become a 20% rate increase over the next four years. In looking at the perchlorate test results, he noted a blip at the Tennant well and at the Dunne Avenue well. He urged the Council to table this item or vote very carefully on the rate increase. It was his belief that the City has already received \$500,000 from Olin. He was not convinced, as a citizen that the City needs to increase the rates.

Mike Marshall, president of the Morgan Ranch Homeowners Association, stated that the homeowners understand that there is a need for a rate increase to cover expenses. However, the HOA is in opposition to the proposed tiered increase for HOAs. He stated that HOAs already pay 66¢ more per unit of water than any other single family dwellings just because they are a HOA. He informed the Council that water was 19.4% of the HOA's entire budget which equates to approximately \$20,000 last year. Using last year's usage and applying the new rate as proposed would result in a 13.9% rate increase for a HOA while other single family homeowners that are not part of an HOA would only get a 5% rate increase.

He felt that this creates an unfair burden on the residents of an HOA, paying up to \$2.54 per unit when a neighbor not in a HOA is paying 99¢. He said that his front yard is watered by the HOA and that it could get up to the \$2.54 rate while paying 99¢ per unit for his backyard. He stated that the HOA has a problem with the proposed definition of a “large user.” He stated that Morgan Ranch has four meters: one for the pool and that the other three meters serve the 96 homes as well as the common area. He stated that each meter averages 32 homes per meter. He felt that it would be interesting to attach 1 meter to 32 single family homes outside of an HOA to see if they exceed 812 units during the summer months. He said that the situation in Morgan Hill is not a lack of conservation but an over usage of the meters. The meters are being used 30 times more than the average homeowner would use. He requested that the Council re examine the proposed tiered rate increase as it applies to HOAs.

Dan Amend, Vice-president of Toeniskeotter and Breeding (TBI) Development, informed the Council that they are the principal owners of the Madrone Business Park and the Cochrane Business Ranch. He indicated that these two business parks represent over 1 million square feet of commercial real estate and house over 25 companies doing businesses in Morgan Hill, including some of the City’s largest employers. He indicated that he has reviewed the information provided by Mr. Dilles and understands the costs associated with the perchlorate issue and the short term need for a 5% increase. However, the Council needs to keep in mind that this 5% increase will have a significant impact on business parks. He understands that it is necessary and supports it. However, he cannot support the 50% surcharge being levied in the hopes of reducing water consumption by the City’s largest users. He stated that he has begun researching with his landscapers what can be done to reduce water consumption but that the proposed thresholds represent about 32% of the water currently being used. A nearly 70% reduction in watering would result in the frontage lawns dying. He stated that throughout the development process, he worked with City staff to design a business park that would portray the inviting image that the City was looking for to encourage businesses to locate in Morgan Hill. This has resulted in Morgan Hill having a business friendly reputation. He felt that dramatically increasing the cost of water would translate into a business tax, an additional cost of doing business in Morgan Hill. He felt that this would damage Morgan Hill’s business friendly reputation and prove a competitive advantage to neighboring municipalities. He stated that TBI stands ready to work with the City of Morgan Hill to study all options available relating to increasing the City’s available water supply and delivering cost affective water to all its citizens.

Eilane Bartak, Cottage Green Homeowners Association, stated that there are 116 single family homeowners in the HOA. She concurred with the comments expressed by the representative from the Morgan Ranch HOA that HOAs are being unfairly targeted. She indicated that there are a lot of retirees on fixed incomes in the HOA. She indicated that the water rates have gone up every year for the past three years and that the HOA has a conservation plan in place. She noted that a typical homeowner is allowed 10 units before the first tier is raised. This HOA also receives the 10 units; but noted that the residents only use between 3-5 units per billing cycle. Based on conservation, this HOA would not fall into the City’s category as units would be credit back to the homeowners. Homeowners would still pay for the water at the normal rate but questioned why a homeowner in a development pays more for their water versus a homeowner who is not a part of a HOA. She requested that that the Council gives HOAs the same credit that a typical single family would be given.

No further comments being offered, the public hearing was closed.

City Manager Tewes said that there are a lot of complicated issues as they affect individual rate payers. However, the City knows that its residential customers and indoor commercial customers have tiered rates in order to encourage water conservation. When staff came to the Council with the suggestion that the City needs to increase rates to improve its revenue requirements, the Council and a number of citizens coming to the podium indicated that the City has problem as the City has tiered rates for some customers but not for others. He noted that the Council is hearing from the other customers as there is discussion about individuals who have outside irrigation meters for which there is not a tiered structure. Therefore, they pay the same for the last unit of water that they do for the first unit of water. He indicated that the City is not talking about the largest water rate users, but that staff is talking about a subset of the largest water rate users who use 400% of the median. This equates to whose water usage is four times the median. He appreciated the fact that there are unique considerations about homeowners associations. If the Council wishes staff to consider this further, there is probably work that staff can do. He wanted to place on the record the context of the water conservation rates for irrigation. He indicated that the second tier would only kick in for those who use a lot more water than all the other irrigation users.

Council Member Chang stated that she agreed with the comments expressed by the homeowners association because they are individual homes. She felt that it was unfair to lump them together.

Mayor Pro Tempore Sellers inquired as to the number of HOAs and industrial users who were contacted.

Mr. Dilles responded that 37 individuals were contacted. He indicated that he would be able to provide the Council with the number of homeowners association that were contacted.

Mayor Pro Tempore Sellers did not believe that the City can abandon the goal of conservation as the City does not have the luxury of doing so in terms of financing and demand on the City's water system. He did not know whether the public, as a whole, was aware of how close the City came to being short of water last year. He said that there was an acute danger from fire in July. If the City is looking at small units of individual users, it may be worthwhile for staff to meet with these individuals and talk about ways of achieving conservation with the understanding that the rate structure would still be something that the City would consider if these goals cannot be achieved. He felt that there may still be an opportunity for City staff to go back and talk with these customers and look at ways to conserve water usage. He said that he was not under the impression that the City would be getting money back from Olin. He stated that he needs clarification with this regard because it would impact his decision on how the City should proceed on this item.

City Attorney Leichter stated that it is an "if" and not a "when" the City receives reimbursement from Olin Corporation. Although the City has received some reimbursement costs to date, she said that it would take some effort, on the City's part, through court action, to get full return on the monies expended.

City Manager Tewes noted that a speaker inquired whether or not it would be a 20% increase. He indicated that the intent of the resolution is to provide for annual 5% increases only as long the Council receives a public report from the Finance Director that indicates that there is still a need for funds to pay for perchlorate costs. If the Finance Director's report indicates that there is not a need for the increase, then the rebates would kick in and would be shown on the water bills. Therefore, it is the intent of the resolution to provide an annual review by the Council to determine whether the City has enough resources. If it does not, the Council would adjust the rates. If the City has enough resources, customers would receive a rebate.

Council Member Tate stated that Section 3 of the resolution gives the Council latitude every year to take the report and figure out what needs to be done. He agreed with Council Member Chang's comments relating to the homeowners association. He could not see paying one rate in the front and another rate in the backyard. He felt that the City needs to find a way to equalize the rates. Regarding the rate payers who are outside of a homeowners association, he felt that Mayor Pro Tempore Sellers has a great idea in terms of trying to work with these customers for a while to let them know that the City would like to go toward a tiered structure. However, the City will work with them to see how it can help them conserve water.

Mayor Pro Tempore Sellers recommended that this item return in six months to determine if water conservation is taking place, otherwise, further discussion/action needs to occur.

Mayor Kennedy stated that his thoughts were similar to the comments made thus far. With respect to the perchlorate issue, he stated that it is a serious problem and that the City is addressing it aggressively. The City is also aggressively going after Olin to recover costs. In the meantime, the City needs to keep its water system funding fiscally sound and viable. Therefore, he felt that the Council needs to increase the rates by 5% and then rebate these if and when the City receives payment from Olin. With respect to the larger homeowners associations and industrial business users, he would support tasking City staff to have another meeting with both of these groups, specifically those who addressed the Council this evening. Staff to work with these individuals to see if a solution can be reached that is fair and equitable to everyone. He felt that the proposal unnecessarily over charges homeowners associations. He said that it is not a good time to impose additional costs to some of the City's key businesses nor does the City want to damage the appearance of their facilities, yet recognizing that there is a responsibility to conserve. He stated that he did not have a problem charging these rates on new development but that for existing businesses, he would support a phasing plan to the new rate structure over a five year period. He stated his support of moving forward of the 5% rate tier structure.

Council Member Carr appreciated that staff would specifically earmark the perchlorate dollars in the billing and how it is accounted for so that the City can give this credit back when the City is reimbursed by Olin Corporation. He stated his support of moving forward this evening with the rate increase to correct and protect citizens from perchlorate. As the City has these additional costs, the City needs to move forward with the rate increase. He would agree to take a look at the tiered rate structure again. He felt that at the end, the City will need to have some kind of tiered rates when the City talks about the high end users; those who use four times the median amount of water. He would like to discuss and figure out what is equitable. He said that he found it odd that HOAs are paying different rates for the

front and rear yards. Maybe there is a way to change how these are metered, provided that everyone understands that there are benefits that are enjoyed by the homeowners association. He noted that citizens do not have access to the amenities of the various homeowners association such as a swimming pool. He did not believe that he should have to pay additional costs for the pools and other amenities that homeowners associations enjoy. These are things to keep in mind as the City considers this issue, but that it sounds as though staff may have some ideas on how the Council can work on these. He stated his support of moving forward with the 5% rate increase and sending the tiered structure back to staff.

City Attorney Leichter indicated that increasing the rates to 5% and sending the tiered structure back to staff would change the resolution. She suggested that staff be allowed to return with a resolution consistent with the Council's action.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** staff to return with a Resolution that would address the perchlorate increase; deferring the resolution on the other increases for six months. Staff to meet with speakers and other interested individuals regarding water conservation and the proposed tiered rates.*

City Attorney Leichter clarified that the action would not automatically adopt a tiered increase in six months but brings the proposed tiered increase back to the Council in six months for discussion.

23. DEVELOPMENT AGREEMENT AMENDMENT DAA-02-07: SHAFER-BAMDAD – Ordinance No. 1651, New Series

Mayor Kennedy indicated that he resides within 500 feet of this development. Therefore, he would be recusing himself from this item, excusing himself from the Council Chambers.

Director of Community Development Bischoff presented the staff report, indicating that the applicant is requesting an additional year's time for both phases of the project to commence construction. He informed the Council that the Planning Commission found that the delays amounted to nine months for the first phase. The applicant is requesting additional time for the second phase because he did not want to begin constructing the first and second phases at the same time. In light of this, the Planning Commission is recommending a 9-month extension for the first phase and a 4-month extension for the second phase and further recommended the ability to provide alternatives to the offsite improvements to Hill Road that would be an equivalent financial value in terms of Measure P commitments.

Mayor Pro Tempore Sellers opened the public hearing.

John Telfer, speaking on behalf of the applicant, thanked the Planning Commission for recommending the extension of time. However, the way it was approved at the Planning Commission level still leaves the project with two problems that he would like to discuss and request Council consideration. As approved, the project would have a commencement of construction deadline of April 30, 2005. In order to meet the City's definition of commencement of construction of this spring date, the project would require a lot of earthwork done a couple of months in the middle of the rainy season. He said that there

are four existing homes that would be greatly impacted should earthwork be done in the middle of winter. He requested that the Council place the commencement of construction date to the June 2005 date, the original request for a one year extension. He stated that it is very important that the spread between phases I and II be one year because this particular project is different from Measure P projects as it is made up substantially of larger lots and will have larger homes. It is anticipated that the homes will be sold from \$1.2-\$1.8 million. He informed the Council that the construction lenders he has been meeting with have a concern because of the absorption factor of how many homes can be expected to be sold at this price range in a given month. There is a question whether the absorption factor can support this price range in this short period of time. He was not sure if the project could receive the financing unless the project is granted a one year gap to allow for the absorption factor. Given these facts, he requested that the Council grant a commencement construction deadline for phase I of June 30, 2005 and a one year extension for phase II to June 30, 2006.

Rafi Bamdad, applicant, stated that one of the main problems of conducting earthwork during the rainy season is attributable to the overwhelming lawsuits that have resulted. He indicated that soil engineers are rejecting to certify compactions in wet muddy soils. Because of the design factors of these homes, the foundations' designs which are slab on grade would result in the project being liable up to 10-years. He requested that the Council grant the normal time frame for construction. He indicated that he was able to move forward with the improvements across the street with the phase I improvements. He stated that he agreed, as part of his Measure P commitment, to \$2,000 per lot equivalent which would result in \$30,000 in improvements to be installed across the street from the project. If he is unable to install the improvements across the street, the City would not receive the full impact of the improvements. He suggested that he be allowed to give this dollar amount to public works to be added to a fund that could be used to achieve the best improvements for the City. He indicated that he has spoken to the homeowners on Shafer and 7-8 homeowners on Conte Way and that they have requested that roads be kept as clean as possible.

No further comments being offered, the public hearing was closed.

Council Member Chang stated her support of the extension of time as recommended by the planning commission.

Council Member Tate expressed concern with not accepting the planning commission's recommendation but that he also has concerns that the applicant would have to come back with another extension request attributable to the rainy season.

Mayor Pro Tempore Sellers indicated that there was another situation when the Council had this issue with larger homes. The cost factors were significant in terms of the financing abilities to sell the homes at the same rate. He inquired whether the information presented this evening was relatively new or was it presented to the planning commission for its consideration.

Mr. Bischoff responded that he did not attend the planning commission meeting and that the minutes do not reflect this discussion.

Council Member Carr said that in general, he was not in favor of extending ELBAs too many times. He understands that there is a need to grant an ELBA, when justified, and the he clearly sees the need for an ELBA for this project attributable to outside agency influences. If the Council follows the recommendation of the Planning Commission, he questioned whether the project would return with another request for extension because of weather concerns. The point where multiple ELBAs come into place is what he objects to. If the Council is going to grant an extension of time, he recommended that one be granted that is realistic in order to make sure that the project gets completed.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Waived** the Reading in Full of Ordinance No.1651, New Series.*

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1651, New Series, as amended, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1599, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-01-07: SHAFER – BAMDAD TO INCORPORATE A ~~NINE-MONTH~~ ONE YEAR EXTENSION OF TIME FOR THE SEVEN, PHASE I UNITS AND A ~~FOUR MONTH~~ ONE YEAR EXTENSION OF TIME FOR THE SIX, PHASE II UNITS OF THE 15-UNIT DEVELOPMENT. (APN 728-10-005)/(DAA-02-07: SHAFER – BAMDAD)** by the following roll call vote: AYES: Carr, Chang, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Kennedy.*

Mayor Kennedy resumed his seat on the Dias.

24. ZA-03-16: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT - SIGN CODE – Ordinance No. 1652, New Series

Director of Community Development Bischoff presented the staff report, indicating that the proposed zoning text amendment would allow for marquees or changeable copy signs but would require that the area for this be included in the overall aggregate sign area allowed for the building. It also limits the maximum letter height on the marquee to 12”.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1652, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No.1652, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO SUBSECTIONS 18.76.130A8, 18.76.250C***

AND 18.76.250F OF CHAPTER 18.76 (SIGN CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ALLOWING CHANGEABLE COPY SIGNS FOR MOVIE THEATERS. (ZA-03-16: CITY OF MORGAN HILL-TEXT AMENDMENT/SIGN CODE) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

25. ZA-03-21: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT – INTERIM USE PERMITS – *Ordinance No. 1653, New Series*

Director of Community Development Bischoff presented the staff report, indicating that the Council directed that a committee be formed to look at the City's requirements for on and off site improvements for interim uses. This came up specifically because of the dayworker center and the implications/cross implications of installing on and off site improvements, particularly when you talk about a use that is of limited duration and of community benefit. He indicated that a committee was formed and included members of the Planning Commission and Council Member Tate. He indicated that an interim report was presented to the Council on December 3, 2003 and that it endorsed the tentative recommendations of the committee. At that time, the Council requested that the committee take a look at two other matters: 1) that there be an exit plan for vacating the premises and returning the property to its original state; and 2) draft findings with respect to the public benefit that would be realized as a result of waiving the improvements. He indicated that the proposed ordinance would not require interim uses to install on site improvements. The waiver would only be available to non profit agencies that provide public benefits within the CC-R or downtown zoning district and is not recommended to apply to other areas of the City. The duration of these interim uses would be up to a maximum of three years with no extensions of time to be authorized. Any use that applies for this waiver would be defined as an interim use and would require review by the planning commission and approved by the City Council. An exit plan would be required to be included as part of the original submittal. This would allow the Council to know what the plan is for vacating the premises once the three years are up. In addition, the draft ordinance would require annual monitoring of the use to ensure compliance with all conditions.

Council Member Tate said that there was a consensus of the committee that they could not see a temporary use beyond three years. He indicated that he proposed extensions up to five years and that he was convinced that this was not a temporary use. It was his belief that at the December 2003 Council discussion, Council Member Carr brought up the question of why a user needs to wait to submit an exit plan and why not start with an exit plan from the beginning of the process. This would give the City something to monitor every year to make sure that the temporary use is on track. He indicated that the request for an exit plan be submitted as part of the application submittal made a lot of sense to the entire committee, thus, the recommendation before the Council this evening.

Council Member Carr inquired how the City would determine public need.

Council Member Tate said that public need was left ambiguous in order to allow the City Council, on a case by case basis, to determine whether there in fact was a public need associated with an interim use.

Council Member Carr referred to page 357 of the agenda packet, section 18.54.210G.2., “The expected time for provision of such services and whether such services would be temporary in nature.” He inquired whether this section was left ambiguous on purpose. He said that it seems that the idea is that the services themselves are not temporary in nature but the fact that the services are taking place in a particular location is temporary. He referred to section 18.54.210I.1 relating to the timeline for purchase and/or lease of another site. He was curious whether there was discussion about the lease of another site which would not be an interim use. He inquired whether an applicant who receives approval of an interim use would be allowed to relocate to another interim site and seek another permit. He recommended that language be included to preclude this from happening.

Mr. Bischoff responded that he was not sure that “the temporary in nature” needs to be included in the ordinance based on the three year limitation. Therefore, he recommended that the second portion of Section G2 be eliminated. Regarding section I.1, he stated that it was the assumption that the three years would be the time period within which this program would need to get up and running. Within the three year period, the use would need to have the financial resources to move to a permanent site. He agreed with Council Member Carr that there was nothing within the ordinance that would preclude the interim use to move to another temporary location.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1653, New Series, Amending Title 18 of the Municipal Code Regarding Permits for Interim Uses.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1653, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.54.200 (Interim Use Permits) TO CHAPTER 18.54 (Conditional and Temporary Use Permits) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PERMITS FOR INTERIM USES, as amended (Amend Section 18.54.210G.2 to delete “~~and whether such services will be temporary in nature~~”; and amend section 18.54.210i.1. to read “A time line for purchase and/or lease of ~~another~~ a permanent site”), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

26. ZA-03-19: CITY OF MORGAN HILL-ZONING TEXT AMENDMENT - COMMUNITY ACTIVITY SIGNS AND CHANGEABLE COPY SIGNS FOR PUBLIC AGENCIES, SCHOOLS, PLAYHOUSES AND RELIGIOUS INSTITUTIONS

Director of Community Development Bischoff presented the staff report, recommending that the Council continue this item to February 18, 2004 in order to allow staff to complete the text amendments for Council consideration.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Continued** Public Hearing to February 18, 2004.*

City Council Action

OTHER BUSINESS:

30. COUNCIL LIBRARY SUB-COMMITTEE SITE STATUS REPORT

Recreation and Community Service Manager Spier reported on the Council Library subcommittee site status report. She indicated that there are two avenues that staff has been working with the subcommittee: 1) submittal of the City's grant application to the State Bond. She indicated that the City was number 52 of 76 applications submitted. Staff was advised that the determination on the funding allocation would be held in September 2004. 2) Looking at alternative sites and new options, including funding and revision to the square footage of the current library proposal. She indicated that for the purpose of the State bond, the City has been looking at a 40,000 square foot footprint to build a library that would meet all future needs out 40-years. She stated that the subcommittee determined that a 30,000 square foot library would take care of the community's need for at least 20 years should the City have to solely fund the library. She indicated that the subcommittee has been looking at site footprints that would accommodate a 30,000 square foot library with a 10,000 square foot expansion. This would include parking and all amenities that need to go with a library.

Council Member Tate indicated that he and Mayor Kennedy worked with a library subcommittee. He addressed the pros and cons for the four site alternative library options:

1) Expansion of the current library facility. Pros: centric to schools; is not a heavy traffic area; no land costs; Cons: would not keep the existing library operating while the expansion is going on; a relocation and disturbance factor; not located adjacent to Monterey Road and therefore cannot be considered a mainstream location; not a lot of cost savings in terms of expanding the existing facility as expected.

2) Construction of a new library on the civic center site (Proposition 14 site). Pros: Approximate to the current location that everyone is familiar with; is not a heavy traffic area; the design for the new library is far along; Cons: Would be the most expensive option; not a main stream location; engineering problems associated with the slope and other factors that contribute to the fact that the site is more expensive.

3) Use of the current Britton Middle School site for a 30,000 square foot library with room for expansion. He indicated that staff has not had the discussion of the use of this site for a library with the School District. Pros: located in the gateway to the downtown; there is a synergy and stimulus with the downtown; will attract patrons that are doing things in the downtown; downtown businesses would benefit from those using the library; expanded parking available; it is a high public image area and therefore can be looked at as a main stream location; there are opportunities in terms of partnerships

with the schools and mutual benefits being derived from this; it is a community centric location; Cons: additional building costs associated with having to build a school use facility; student supervision required by the fact of large student use; County regulations in terms of what county library staff can do to supervise students as opposed to what school supervision can provide; downtown traffic; rush hour concern in terms of traffic safety (e.g., parents picking up students in the afternoon); unknown if the site is available.

4) The Sunsweet property located between Third and Fourth Street. Pros: site is located in the heart of the downtown; synergy and stimulus associated with the library in the downtown area; high public image; mainstream location; pedestrian friendly; easy to access all parts of the core of the downtown; community centric; Cons: library would have to be designed as a two-story building where libraries are better laid out as single story building; supervision problems when floors are split; expansion beyond 30,000 square feet would be more challenging because of the two-story aspect; individuals may consider this area to be unsafe due to downtown traffic; shared parking arrangement but that there would be potential for lower costs associated with a private development/lease the facility; costs unknown at this time.

Council Member Tate stated that he wanted to go in a direction of narrowing the alternatives to one or two options this evening. However, Mayor Kennedy wanted to keep the options open. Because the City does not know if it has an audience with the School District, the subcommittee does not see a way to narrow down the alternatives. Therefore, he and Mayor Kennedy are not recommending the removal of any of the alternatives at this time. He indicated that the subcommittee wanted to put together a timeline for this evening's meeting. The subcommittee is looking at near term meetings in the next couple of weeks that will allow them to work on the timeline. It is anticipated that the end of the timeline would be June 2004 to return with a solid proposal for the location and financing of a library facility.

Mayor Kennedy suggested that multiple library options be kept on the table in order to solicit community input in the selection of the best location. He indicated that there is thought of sending out a survey to receive public input of where the community believes the best site for the library would be as part of City Visions. He said that there are significant shortfalls associated with the financial gap with all options ranging anywhere from \$3 million to as much as \$7 million. The City needs to find a way to close this financial gap. However, he is committed to finding a way to build a new building as the Council needs to deliver on this promise.

Mayor Pro Tempore Sellers inquired as to the maximum allowable footprint associated with the two-story option.

Council Member Tate indicated that Mr. Garcia may wish to make some comments and that it might be best to ask him this question.

Council Member Carr indicated that at the Council retreat, the Council set a goal that it would have a plan in place for the library by June 2004. He inquired whether the library subcommittee has calendared this timeframe out.

Council Member Tate stated that he tried to calendar the library schedule this afternoon. He said that he would be able to come up with a calendar in the next few weeks. He said that a big part of the calendar is the public input period. He stated that the library subcommittee would like to take a couple of months to educate the public in order to get back meaningful feedback. He anticipates returning to the Council with a calendar on how to achieve having a plan in place by June 2004.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia thanked the Council for reconsidering his Sunsweet site as an alternative site for the library. He indicated that he is trying to achieve a synergy between downtown housing and the downtown area. The previous proposal was a link between the courthouse to the east of the site and the downtown. This proposal called for a promenade and art walk on Third Street that would incorporate nicely with the proposed library. Proposed is a 20,000 square foot footprint for the first floor and would accommodate a 10,000 square foot second floor. He indicated that he would like to see the City go with a two-story building in the downtown location because of the transit oriented development that the City is trying to create in the downtown. He indicated that a 2-3 story residential development is proposed adjacent to the library. He did not want the residential development to be taller or overseeing the library. He stated that he was approached on how to produce a library on a public-private partnership so that the funds expended by the City would be the least funds for the greatest use. There was discussion about a public-private partnership and a long term lease of which the City would be able to purchase the library building for \$1 at the end of the lease term. He felt that shared parking with downtown merchants would allow synergism between the library and downtown businesses. He has forwarded a letter to the City that would commit to today's building rates as long as he can be involved in the design process to help keep costs down. He noted that the Steinberg report felt that the Sunsweet site was the most compatible downtown site. He said that he would like to work on the library in partnership with the City. He indicated that alternative 1 offers 108 parking spaces and that the second alternative proposes 95 parking spaces. He said that the site is almost 2.75 acres and includes the Redevelopment Agency's 8,400 square feet. He said that the key to the partnership would be how the site is arranged to accommodate residential development.

George Nale addressed the need for a larger library. He stated that he has great respect for the time and effort that the Council members spend on trying to do the right thing for the City. The issue is that many individuals in Morgan Hill expect a new library based on the Visioning process, from the efforts to get state funding and from the apparent need. He noted that the state has let the City down but that it was his hope that this body does not let the citizens down. He said that literacy is a key factor to success in life. He requested that the Council help get the library that is needed and not max out the City's credit card until there is a solution.

Charles Cameron stated that the librarians took a look at the proposition 14 library proposal. They decided that what is really needed is a 30,000 square foot building that would get them through the next 30 years. He recommended that the indoor recreation plans be reduced by 25 percent and earmark money to build a 30,000 square foot library.

Jean Lloyd stated that over the years there have been many wise and carefully announced statements regarding the values of the importance of a library from children to the oldest patrons. She said that there have been requests from numerous sources for rebuilding and refurbishing the old library building. She requested the Council's most diligent efforts toward positive endorsement of a new library.

Joanne Rife stated that she has been a long time library patron and that over the years; the library has grown to be inadequate in its ability to serve the community. On behalf of herself and thousands of library users, she requested that the Council consider funding a large adequate library building for the least amount of money as soon as possible.

Carol O'Hare, co-president of the Morgan Hill Branch of the American Association of University Women and a former president of the Friends of the Library, urged the Council to build a new library. She was encouraged to see that the Council is looking at sites and that Mayor Kennedy has stated that the library will happen. She expressed concern that funds that might be used for the library would be used for other projects. She requested that the Council look at all the building projects, decide how they are to be funded, and then proceed.

Beverly Williams felt that one thing that has to be kept in perspective is the importance of what a new library means. As an educator and president of the Friends of the Morgan Hill Library, she felt that with the current financial situation, it will place a bigger demand on library services. She felt that the City has to be able to serve the baby boomer population and felt that they would need a library that is much different than what the City has today. She requested that the Council consider making the library a high priority.

Maryanne Flynn stated that as a 4.5 year resident and someone who plans to live in Morgan Hill for a long time, it is important to have an adequate library facility. Seeing the Council allocate funds for a library is something that would induce her pride in the community and make more resounding her recommendation that Morgan Hill as being an excellent place in which to live and raise children. She requested that the Council act to fund a new library for the community as soon as possible.

No further comments were offered.

Mayor Pro Tempore Sellers thanked all the individuals who spoke this evening. He said that the entire Council unanimously supports a new library as soon as possible, noting that funds were set aside early on. He felt that the City needs to focus on getting a library as soon as possible. He did not believe that it needs to be an "either or" but an "and." He stated that it needs to be pointed out that the library will always be important. He noted that there is an assumption, across the board, of the square footage for the library (e.g., 40,000 square feet versus 30,000 square feet). He said that the library that was built in 1973 was not built for the people who resided in Morgan Hill in 1973 but was built for a growing community. There was discussion as to the amount of square footage that would be necessary per library user. It was his recollection that it was estimated that ½ square foot would be needed per user of the library. He felt that one of the issues the Council needs to talk about is where the balance is. He stated that the City has looked at the library in terms of accommodating the entire population of library users which includes residents to the north and south of Morgan Hill and currently includes individuals

from the Coyote Valley as well as residents from San Martin. He noted that there is a question about services to these two communities based on the City's limited resources. He stated that he would like to look at what the square footage would be. If you look at the square footage for 20 years from now, looking at just Morgan Hill and what is being proposed with Measure C, the square footage is proposed for a population of 48,000. This would result in a smaller footprint than 30,000 square feet. He stated that he would insist on having a larger footprint in order to accommodate growth otherwise the next generation would be facing the same problem that the City is facing today. He requested that the library committee consider different footprint sizes. It was his belief that the County's funding adds additional square footage and may help the City get closer to the gap. He said that there are some residual benefits to siting the library in the downtown area such as pedestrian access and mixed uses. However, for the Britton alternative, there is a concern with traffic. He felt that the City needs to consider the mitigation costs to relocate where parents pick up students and mitigate the attractiveness of the site. He further recommended that the library committee make interim recommendations along the way; narrowing the options to 1 to 3 options. He expressed concern that should the options be narrowed down to 1 and the Council is not in agreement with the recommended site, this would result in further delays.

Council Member Tate said that there are 54,000 people in the service area of the Morgan Hill library and that the library committee wanted to program room for growth to 2010. He said that the 30,000 square foot library is a rough number based on the ½ square foot per population served. He felt that Mayor Pro Tempore Sellers raised a good point about alternative funding sources outside the Morgan Hill community because the Morgan Hill library is serving individuals outside the community. However, these are long term discussions but that the committee will place this recommendation on the list.

Council Member Chang recollected that at one point the proposal was for a 28,000 square foot library facility. She felt that the square footage was something that could be looked at. She noted that the City has reserved \$7.1 million for the library. If the City used \$.8 million from impact fees, it would increase the funds that could be used for the library to \$7.9 million. The sale of the existing police station would give the City another \$.7 million, resulting in a library budget of \$8.6 million. She recommended that the City use some of the flood money and this would take the library project to \$11.6 million. She noted that there are \$3 million in funds available to be used in the downtown area. Maybe part of this \$3 million can be used for the library, if sited in the downtown area. If the City can be flexible in terms of the library size, she felt that the City would be able to fund additional monies for the library and bring the construction of the library closer to fruition.

Council Member Carr said that when he became aware that this library report was coming before the Council this evening, it was his full intention to narrow the options as it was his belief that this was one of the things the Council has to do. After hearing the report, he understands why Mayor Kennedy has pushed to retain the four options described. He was going to suggest this evening to drop the most expensive alternative but noted that this is the alternative that the City has submitted an application for round 3 of State funding. He suggested that this alternative remain as an option. He supported taking interim steps suggested by Mayor Pro Tempore Sellers as it is important to bring the Council along the process. He stated that he would hate to be in the same spot that he was at his first Council meeting where the Council had to make a decision on the location of the library. At that time, the Council had a recommendation from a group that it had asked to do the work, noting that the Council chose a different

site from what was recommended by the group. He stated that he would hate for the Council to be in this position again in June. He supported taking interim steps as the Council narrows down the options, bringing the Council and the community along will be important to not having a conflict and moving forward with the library sooner. If the Council reduces the size of the library, he felt that it would be important to keep the larger footprint with the idea of expansion. The Council will need to think about how to plan and pay for this expansion. He felt that it was important that the Council makes sure that it is doing what is adequate for the community and then some. He did not believe that the City should be the sole agency responsible for building the library as this is a County library and serves more than the residents of Morgan Hill. However, in these economic times and huge cuts that the County is facing, he did not have hope that there would be funding from the County. Therefore, he felt that the Council needs to front load the cost of the library in order to get it constructed sooner, on the City's time schedule. He said that there may be commitments that the City can get from the County about backfilling these dollars at a later date or that they pay for the expansion at a later date. He noted that Council Member Chang has given suggestions on where additional funding can come from. It is his hope that the library committee will return with a timeline for the library that includes when and how the Council will discuss these dollars. He stated that he too is concerned about what the Council will be spending from tonight until June 2004 from Redevelopment Agency funds that will be spent and will not be available for this project. The sooner the Council has the discussion about where dollars will come from, the better off the City will be. He noted that the City would be meeting next week with the School District and that this would be a first step in deciding whether the Britton site is a potential site.

Mayor Pro Tempore Sellers indicated that the City is now in the planning phase for the indoor recreation center. He said that most of the cost for the planning for this center have either been committed or expended. Therefore, the difference where the center is now and where it will be in June will be minimal. He agreed that the City needs to look at interim steps and identify the funds as soon as possible. It was his belief that the sooner the Council/Agency identifies the funds; the better off the City will be as the community will have a clear sense of where the money will come from. However, he wanted to point out that there is no reason to halt progress of the indoor recreation center at this point because the funds have already been spent and the process is in place. He said that there may be some risks should the Council/Agency Board decides to make wholesale changes to the center as it would result in the redesign of the center. He was confident that this would not be the case. He noted that Council Member Chang pointed out that the City has other sources of funding and that it can change priorities, shifting funds over. He agreed that the Council/Agency Board needs to identify existing funds available and take a look at reallocation and/or stopping projects.

Mayor Kennedy requested that the City Manager take a look to see if there are any other possible sources of funding that can be earmarked for the library. He stated that he would not discount the private sector as there are some members of the community who have benefited greatly from the fact that they are in Morgan Hill. Perhaps, they may be willing and able to help close the gap if the City ends up short of funds.

Council Member Chang recollected that this issue was discussed when she was elected to her Council seat seven years ago. She said that she has a different view point now than she had seven years ago. She stated that she realizes that the downtown may be the best location for a library. She stated her

preference of Mr. Garcia's site as it would take individuals to the downtown, noting that the City has talked about a Downtown Plan for years and that it would be a great asset to the downtown. She was not sure whether the City should construct the library on its own or whether it should be in partnership. She suggested that the City look into the feasibility of purchasing the site from Mr. Garcia and that the City construct the library. This would result in the City owning the site at the end.

Council Member Tate thanked the Mayor, Council Members and everyone else who has helped in the work toward a library. He stated that he was pleased and appreciated that there is a spirit of cooperation and that everyone is pulling toward the same direction.

Action: *The Council **reviewed** the recommendations and **provided** the above comments.*

Redevelopment Agency Action

OTHER BUSINESS:

32. SELECTION OF EL TORO BREWING AS THE DEVELOPER FOR THE POLICE FACILITY

Director of Business Assistance and Housing Toy presented the staff report, indicating that the economic development subcommittee (EDS), consisting of Agency Members Carr and Tate, is recommending that the Agency Board select El Toro Brewing Company on the sole basis of the financial return to the Agency. However, the EDS is recommending that the exclusive right to negotiate have key milestones for performance and that these key milestones be tied to specific dates. Failure of the developer to perform in meeting the key milestones could be the basis for terminating the exclusive right to negotiate agreement by the Executive Director. Further, the EDS is recommending parameters for staff to negotiate this agreement.

Agency Member Carr thanked the two teams who submitted proposals and the time spent with the EDS. He said that both proposals were exciting ones. Along with staff, the EDS spent a considerable amount of time in the request for proposal process and in reviewing the proposals. The EDS also spent a lot of time coming up with ideas on how it would enter into discussions to compare and contrast the different proposals. He indicated that each project proposers were interviewed on two separate occasions and answered questions that arose. What it came down to was the financial return to the City and the goals of the downtown plan. He stated that the EDS felt both proposals met the goals of the downtown plan and that one had a better financial return than the other; that being the El Toro Brewing Company proposal.

Council Member Tate said that the notion contained in the staff report was that both proposals were equal in terms of their influence on the downtown. However, the EDS went through an evaluation process. He said that the El Toro Brewing Company has a single owner operator approach as opposed to the Page proposal which had a developer and an operator as separate entities. He felt that there were certain advantages when you have a single individual to deal with and that there are efficiencies associated with having to deal with a single operator. On the other hand, in looking at the Page proposal

of having an operator who is not the developer, if the developer is not proceeding correctly and you need someone else to come in, you have the back up notion of a second party to deal with. He felt that these were offsetting issues. He said that it was the opinion of the EDS that the design of the El Toro proposal was superior as this proposal plans to brew on site and incorporate the Poppy Jasper as well as other elements. The EDS felt that the Page Holding's project had a more realistic development cost and schedule built into their plan. This is one of the reasons the EDS is suggesting an aggressive schedule on the exclusive right to negotiate. The EDS felt that the Page proposal was a little bit more upscale and may fit the Morgan Hill image a little better in terms of the sample menus provided. They do not have as many games but is more of a dining experience. The EDS felt that the Page proposal, in terms of what they were setting out as their conditions going into the exclusive rights to negotiate, was a lot firmer in terms of the solid things that could be nailed down. With the El Toro proposal, there were notions that the City wants to get into the negotiation phase and that everything is open to negotiate. The EDS is trying to pin some of these down in the exclusive right to negotiate conditions being recommended. He noted that the Page proposal had an experienced operator who has been successful in one location and has learned how not to do it in another location. He indicated that these were some of the considerations that were made by the EDS but that the net overall was that both proposals were equal in terms of the impact to the downtown with a much better return to the Agency with the El Toro proposal.

Agency Member Chang stated that she was trying to understand how you would negotiate a higher purchase price if the project's economics supports such an increase.

Agency Member Tate said that the business plan presented by the El Toro proposal gave the combined owner/operator a rate of return on investment that was extremely high. This created a question of whether the El Toro proposer was paying enough for the building if he could achieve this kind of a return. He said that a normal rate of return for a restaurant might be approximately 20-25%

Mr. Toy addressed the rate of return. He said that in looking at the operating proforma over a five year period it was estimated at an internal rate of return of approximately 80¢ on the dollar per year and could be a little bit lower.

Chairman Kennedy said that some RDAs share in the high return. As it appears that the City is giving a bargain sales price, one way to negotiate an agreement is that if their return does in fact reach this level, the City shares in the return on investment.

Agency Member Tate indicated that sharing in the return on investment was not offered in the proposal but that it could be something to negotiate.

Chairman Kennedy opened the floor to public comment.

Rick Page stated his disappointed but appreciated the Council's consideration of his proposal. He said that he had no qualms with the process of the EDS and felt that the process was fair and unbiased. He stated that both proposals have set high expectations relative to the quality of the building that will ultimately become the northern gateway to the downtown and to the quality and the viability of the

restaurant franchise. This is an important project to downtown business owners. He stated that he understands the short term financial process the City is under and that he knows the real and hard tradeoffs the City is grappling with. He stated that City staff sent out 60 solicitations of interests and only received 3 proposals. Of the 3, only 2 had any significant restaurant experience and one of those dropped out because they could not see how the project could pencil given the construction costs and the start up costs of a restaurant. Of the 2 remaining proposals, the one being recommended this evening is the one that proposes \$800,000 less in investments and does not have significant restaurant start up or management experience. He felt that only time will tell whether this was the right or wrong proposal to have chosen. While he poses some series questions, the process has been fair and has yielded its results. It was his hope that his proposal helped raised the bar and made the decision difficult.

Rosy Bergin expressed concern about the high cost to renovate the police station into a brew pub. She identified examples of renovations that have failed: Station 55 in Gilroy; Barley and Hobbs in San Mateo; Fanny and Alexander's in downtown San Jose; the Old City Hall in Gilroy; and Stoddard's in Campbell. She stated that these were examples of restaurants that spent a lot of money changing a use. When you are talking about a high amount of dollars, it is difficult to stay in business longer than a couple of years when you have high costs to pay back as you have spent all your money on renovations. She felt that the City has this tremendous, well located, unencumbered asset with close to 50 parking spaces. She encouraged the Council to market the property to attract a well funded retailer in order to get top dollars for the property to add money to other RDA projects.

John Rick stated that he has studied and reviewed both the packages in detail and found both to be good solid plans. He addressed a concern raised by City staff in its recommendation to move forward with the El Toro proposal. He indicated that his CPA firm was requested, by the share holders of El Toro, to review and evaluate the business operations and the start up costs. He relied on industry data that was provided by the National Restaurant Association, and Robert Morris Associates. With the permission of two of his firm's clients, Florentine Restaurants and Hoagies, he was allowed to assimilate data that they prepared in developing and renovating other locations for their franchises. He previously reported back to the share holders that start up costs are well within a tolerable and achievable range. He said that a reason that restaurants fail is because they put too much into the project. He said that the projected costs are doable for this proposal. He found that the projected operations, especially the key determinants of seat turns and average ticket prices, are extremely comparable for south bay locations with similarly styled establishments.

Cindy Azevedo stated that it is interesting that both Rick Page and Pat Forest approached the family as their first choice to be their tenant at this location. She thanked them and expressed that interest rates are so low that her family would like to be the owner, developer and operator of this site. She indicated that the family's beer is currently being sold in 48 counties in California and is shipped to Wisconsin and Washington, D.C. She stated that she has visitors from throughout the United States as well as international visitors seeking her business because of the quality of their beers, indicating that visitors expect a restaurant as part of a micro brewery. She would like to provide this in the downtown. She stated that the family is dedicated to making the brew pub a success and act as catalyst to the downtown. She thanked the Council for this opportunity and for the recommendation of the EDS. She realized that the process has been long and hard but that in reality it will be a success. Their vision will be the best

choice and that it is her hope that the City will choose to negotiate exclusively with her family so that they can open as soon as possible as it is her family's belief that theirs is the best option.

Anthony Tissot stated his support of the El Toro project for the police station site. Given the two proposals made, he felt that this one makes the best economic sense for the community as it is less money out of the City's pocket and with more money coming into its coffers. It was also his belief that it has the potential of becoming an icon within Morgan Hill. The proposal and the multi use capability will draw more foot traffic. He felt that this proposal would make the best economic sense and will do the most for the downtown's vitality.

Dan Kenney stated his support of the El Toro project as he reviewed the design and felt that it would compliment the downtown. He felt that the financial plan looks good. He noted that Mr. Acevedo is a local individual and that it would be nice to have a local company coming forward and building up the downtown. He recommended that the Council move forward with this project.

Geno Acevedo stated his appreciation of the recommendation of the EDS. He said that his financial information is contained within his business plan in great detail. He encouraged the Agency Board to review them in more detail to become confident of his numbers. It was mentioned that the City would want to share in profit. He said that this is negotiable; however, if the City wants to share in their profitability, the City would also have to share financially in their risk as well. He said that he spent a lot of time on the site with his architects and general contractor who provided him input. He stated that these numbers come from reliable and experienced individuals who have constructed restaurants from the ground up, including retrofitting buildings. He indicated that Stoddard's Sunnyvale brewing company is struggling through bankruptcy.

No further comments were offered.

Vice-chairman Sellers said that the City looked toward a restaurant for its residual benefit to the downtown. He said that other communities have public-private partnerships where the public entity gave some concessions in order to win a private benefit that ended up having significant community benefits. He said that the only premise to proceed with this proposal is attributable to the significant benefits that this type of a project will have in the gateway into town. He felt that this answers the question of why the City is giving \$650,000 and not more. He said that although the City has been thorough in looking at the financial plans, the City needs to look at design standards and uses. He said that several items were very attractive about the two proposals but that there were several items that were not as attractive. Some of those qualities were not things that he believed would contribute to the direction that the City would like to go in the downtown. He inquired what can be done or should be done to ensure that the design elements and the business concepts are going in the direction expected. He noted that there are other entities in the middle of the downtown that make a lot of money but are not necessarily desirable. He stated that he wanted to make sure that the business entity that enters at the front end of the community does not become one of these.

Mr. Toy said that the exterior renovations and the interior floor plans would be the standards that the El Toro Brewing Company would be held to. He indicated that the base line business terms would include renovations and what is expected to be received as a finished product.

Agency Member Carr said that key milestones were included so that time is not wasted and the proposal is delivered. The EDS did not want to get into a 120-day period where it becomes a different proposal than what was chosen by the City or that the City simply wasted 120-days only to find out that the project was not viable. He recommended that thought be given to strengthen this.

Vice-chair Sellers noted that the design and business concepts were not specifically referenced.

Agency Member Chang stated that it is possible that staff would figure out a way to get the return at a normal pace so that the purchase price can be higher.

Mr. Toy clarified that the project is 80% based on the business plan. He stated that there is an assumption of 3.5 table turns which could be higher or lower in the fifth year.

Agency Member Chang noted that Chairman Kennedy suggested that the City share in this portion of the profit. She inquired whether staff has seen this type of profit sharing example in any other community.

Mr. Toy said that there are other agencies that enter into a base ground lease and have a profit sharing base when certain thresholds are met. He stated that staff could take a lot at this and negotiate profit sharing.

Executive Director Tewes indicated that the proposal would have to inject more equity into the project should the costs go up. This would affect the rate of return significantly. He said that the EDS was clear in their recommendation that the minimum purchase is \$650,000 to the extent that the rate of return is affected by the operating assumptions or how much equity has to be injected. However, the \$650,000 is the minimum amount the City would receive.

Agency Member Chang understood that the City is trying to make this project work. However, to what extent is the City trying to make this project work? She said that last time the City looked at the value of the property; it was appraised close to \$1 million. In looking at some of the properties located in the downtown, she noted that some of the restaurants were being sold at over \$200 per square foot. She was trying to determine whether the \$650,000 was the correct purchase price. If the City is selling a piece of property lower than the market value dictates and gives the proposer an 80% return on their dollar, she did not believe that she would be treating the citizens of Morgan Hill fairly. She was looking at other suggestions other than the profit sharing portion.

Agency Member Carr said that approximately nine months ago, when the City made the decision to move the police department sooner than expected, the City had an opportunity for the building at this key corner to do something economically. The entire Agency Board was excited about the possibilities and the opportunity of some type of entertainment venue, maybe a restaurant. He noted that the Agency

Board heard from many speakers that the building will need to be renovated significantly. If the City wants the use to be successful as a key corner of the downtown, perhaps it is not something that the City can generate market values for. Perhaps some things have changed and there are other things to consider at this point. He said that the process that the City went through was based upon the excitement of the possibilities. He noted that it was mentioned that 60 statements of interest were sent out for this piece of property. The statements sent out not only include restaurants but went out to other retail users and was published in newspapers, magazines and trade journals. He noted that the City only received three interests, all of which were restaurants.

Agency Member Chang stated that the Agency Board talked about looking at return on investments for every benefit being done in the downtown at its recent goal setting session. She did not believe that the City has established a rate of return. She inquired as to the anticipated rate of return for this proposal.

Mr. Toy said that it was his understanding that the highest and best use for this property would be an office. He stated that renovations for an office would not be as extensive and would not require a lot of money initially. Therefore, more could be received for an office use. However, an office use would not be the catalyst project that the City is looking for in the downtown. An office use would not generate sales tax revenue where a restaurant use could generate \$20,000-\$30,000 in taxable sales. Restaurants would also bring individuals to the downtown area and would act as a catalyst where these individuals would spend money in the downtown. Office users would also patronize the downtown but there is a question whether the downtown would be a destination point. When you take all these factors into account, the EDS is not stating that this is the highest and best use. The EDS is stating that this is the best use to meet the goals of the downtown plan and has the opportunity to be a destination/catalyst for the downtown, and would generate taxable sales. This is why the proposer has to spend more money to renovate the building into a restaurant and thus have to pay less for the building. He indicated that the current office vacancy rate in the downtown is at approximately 20%.

Action: *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0) **agreed** to extend the meeting time to midnight.*

Agency Member Chang inquired whether the City could achieve higher than the \$650,000 price.

Mr. Toy said that in the exclusive rights to negotiate, detailed information would be provided in order to determine the numbers and what the rate of return would be.

Vice-chairman Sellers stated that this is a difficult decision. He was anxious and reluctant as the financials are not as strong as it would be if you look at all the different projects. However, the bigger concern he has is making sure that the City gets what it wants. Should the City place the property on the market to include retail and office use, with the current 20% office vacancy rate, he felt that the building would sit vacant for a long time. He said that the \$350,000 benefit that the City may receive on one end would be lost at the other end because the City would receive less sales tax and less development in the downtown. He felt that the City needs to factor this in. He stated that the City cannot be in a situation where things were not as described, extending out the process. He noted that there is a time issue

involved and that he was anxious that the building remain vacant for any length of time. If it turns out that the City does not believe that the entity will be able to perform, this needs to be known at the front end and not risk having a vacant building a year from now. If there is any hesitation that there is an inability to perform, that this return to the Agency for reevaluation of the entire project as the City cannot afford to drag out negotiations or take too many risks with someone who cannot perform. He stated that he would agree to proceed with the recommendation this evening based on these two thoughts.

Agency Member Chang said that there is \$1.2 million that may be needed for improvements. She inquired whether the EDS is recommending that the City lend funds for the improvements.

Agency Member Carr indicated that the proposal did not suggest any loans from the City.

Agency Member Tate indicated that the EDS was not following the \$1 million appraised value concept.

Agency Member Chang stated that she would support a maximum of a \$350,000 City investment. She noted that staff indicates that there may be \$20,000 - \$30,000 in sales taxes to the City from the restaurant use. Therefore, it would result in a 10-year payback period.

Mayor Kennedy indicated that the revenues could be greater if there was an agreement for profit sharing.

Agency Member Carr stated that the suggestions presented by Vice-chair Sellers were the intent of the EDS recommendation. He said that milestones and timing are important. He noted that the recommendation suggests that the Executive Director would report to the Agency. He did not want to get to the end of the 120-day period only to find out that this was not the right use and that the City would need to start all over again.

Vice-chairman Sellers said that his comments were not directed to making changes to the exclusive right to negotiate as it was to the negotiators themselves in giving direction to those who will be taking the lead in negotiations. If there is any hesitation, staff is to return to the Agency Board. Should the design criteria not be met, this warrants returning to the Agency Board as well. He stated that this was more of a direction as opposed to modifying the documents this evening.

Agency Member Carr stated that both sides on the negotiating table have heard Vice-chairman Seller's comments clearly and have heard the intent that the \$650,000 as being the minimum and that the EDS would take steps to take this cost higher.

Agency Member Tate stated that with these understandings, he would support staff's recommended actions.

Chairman Kennedy stated that this was a difficult decision. He felt that both proposals were excellent and that he would love to have both projects in the City. He was convinced that either proposal would succeed and that the El Toro project would be a good project for the downtown.

- Action:** *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Selected** El Toro Brewing to Enter into a 120 Day Exclusive Right to Negotiate (ERN) Agreement with Key Milestones for Performance.*
- Action:** *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** the Parameters for Negotiation during the ERN Period.*
- Action:** *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Authorized** the Executive Director to Prepare, Negotiate, Execute, and Implement the ERN; Including Termination of the ERN for Failure to Meet Key Milestones.*
- Action:** *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Directed** Staff to Provide Regular Reports on the Status/Process of the ERN.*

City Council Action

29. COMMUNITY INDOOR RECREATION CENTER – RESULTS FROM COMMUNITY MEETING

Assistant Director of Public Works Struve summarized the comments received at the Parks and Recreation meeting held last night in a memo to the City Manager and distributed to the Council this evening. He indicated that 400 residents in the vicinity of the indoor recreation center were invited to see what would be taking place with the project and take their comments, noting that there was not a large representation of residents in attendance. Of those in attendance, their comments were primarily positive and that there was specific interest in a badminton court which will be part of the gym. There were some questions about the senior activities to which staff answered. He informed the Council that the next time the City would go to the public about the project would be as part of the CEQA process. He indicated that staff would be returning to the Council requesting that it open the public hearing for the CEQA process.

Mayor Kennedy opened the public comment. No comments were offered.

Mayor Pro Tempore Sellers commended staff for their efforts on the indoor recreation center. He indicated that one of the reasons the City received relatively few comments was attributed to the work done at the front end that included a lot of community meetings and outreach to the senior community and the youth entities. These meetings evolved to a degree that it satisfies the needs of these communities as well as the community as a whole. This front end work is a significant reason the process has become a lot smoother.

Action: *By consensus, the City Council unanimously **Received** Report on Public Meeting Held January 20, 2004 regarding Design of Indoor Recreation Center.*

27. CAPITAL FUNDS FOR DAYWORKER CENTER

Assistant to the City Manager Eulo presented the staff report, indicating that the dayworker committee has received building permits and secured a lease for the center. The dayworker committee has approximately \$150,000 of anticipated expenses associated with the move on. He informed the Council that the dayworker committee has not established itself as a separate entity from the Catholic Church and are working under the umbrella of the non profit designation of the Catholic Church. He indicated that the City has one contract for the operations with the Church and that the other contract for capital funds will soon be with the Church. The request before the Council would be for another \$50,000 CDBG contract to be with the Church. He indicated that the \$50,000 would come via a transfer of the current fiscal year's allocation from the Galvin Park improvement project to the dayworker center with the understanding that the Galvin Park improvement project would receive the \$50,000 in the next round of CDBG funding to return to the Council within a couple of months. Staff has determined that this will not cause a delay on actual improvements to the park.

Council Member Chang indicated that it was her understanding that the building would be moved to the site this weekend. She thanked the Council for making the dayworker center a reality to this point. She stated that she would not propose or vote for any further capital funding requests for this project.

Council Member Tate said that he wanted assurances that this is the last request for funding whether it be a loan or grant.

Mr. Eulo stated that the Council previously indicated that there would be consideration of a loan for the offsite improvements to Weston Miles. He indicated that a loan for the offsite improvements would return to the Council associated with the ultimate development of the site.

Mayor Kennedy opened the floor to public comment.

Julian Mancias thanked the dayworker center subcommittee for their hard work and for the Council's adoption of the interim use ordinance. He informed the Council that the dayworker center project does not have enough money. He stated that this project is close but that it needs additional help. He indicated that the dayworker committee will be actively pursuing funding and creating methods of fundraising to take care of this matter. The dayworker committee has agreed to do everything that the Council has requested, including working on an exit plan immediately. He said that it is his hope that this would be the last request for funding assistance.

Council Member Carr said that back in November, Mr. Mancias came before the Council asking for a change in the ordinance dealing with onsite improvements. At that time, Mr. Mancias indicated that the dayworker committee was \$50,000 short of proceeding with the center and that if the Council adopted an interim use ordinance, it would make up the difference. At that time, he asked a lot of questions and Council Member Chang provided information. He noted that Council Members have made fundraising

calls to help make up the \$50,000. He noted that the Council approved the interim use ordinance this evening and that a couple of individuals spent a lot of time putting the ordinance together. Yet, this project is \$50,000 short and that this raises concerns. He stated that he needs to understand better the financing aspect associated with the project as it has been three months and the project is still where it was after the City made a significant change to an ordinance and standards, especially for a use in the downtown.

Mr. Mancias informed the Council that plans to acquire funds did not come to fruition. He said that there were additional costs associated with the modular unit. He stated that it is his hope that some of these costs may be reduced through donations. He said that the \$50,000 is needed to make the project functional. If some of these costs can be reduced and the project does not need the entire \$50,000, the dayworker committee may be able to return the unused portion to the City.

Council Member Chang indicated that two reasons for cost escalations are attributable to the increase quote in relocating the modular units (increased from \$8,000 to \$58,000). She indicated that the dayworker committee had a goal of making \$30,000 at a fundraising event. However, only \$12,000 was raised at the New Year fundraising event. This resulted in the need to return to the Council for additional funding. She stated that she feels bad returning to the Council seeking additional funding.

Mayor Pro Tempore Sellers noted that Mr. Mancias mentioned that he is building up his enthusiasm and interest that there would be lower costs in terms of in kind services and fundraising efforts. He inquired whether it would be viable to consider a 12-month short term loan of these funds. He said that the CDBG funds go back to very significant needs in the community. If the funds could be used for the time needed for the project while generating/raising funds to pay back this loan, the City could use these funds for other community needs as well.

Mr. Mancias stated that he would love to receive money from the City and be able to pay it back. He did not believe that this was an unrealistic request and that it can be done. However, he expressed concern that the dayworker committee has to work on its three year exit plan and that this will involve putting money aside as the committee works on its fundraising efforts. He stated that he would be willing to present the loan option to the rest of the board for their consideration.

No further comments were offered.

City Manager Tewes noted that Mr. Eulo indicated to the Council that at an earlier Council meeting, it dealt with two separate issues: 1) onsite improvements and 2) offsite improvements. He noted that the Council is again discussing onsite improvements this evening. With respect to offsite improvements, the Council indicated an intent to lend the developer of the project, Weston-Miles, an amount of money to pay for certain of the offsite improvements which were required by the project but are considered to be attributable to the permanent use 3-5 years from now. Mr. Weston asked the City for the opportunity to lend him funds and that he would repay the funds later when the permanent use comes in. However, at that time, Mr. Weston advised the Council that some of the offsite items were not attributable to his project but were attributable to the dayworker project. Therefore, some of the loan would have to go the dayworker project and not just to the Weston-Miles project as Mr. Weston did not want to take

responsibility for this cost. If the loan is appropriate, staff would return to the Council with the actual term of the loan documents that it authorized staff to negotiate. However, it may be conceivable that there may be a loan to the dayworker committee for their share of the offsite improvements that Mr. Weston did not believe were his.

Mr. Eulo clarified that the brief budget presented in the staff report does not count on getting an additional loan from the City for the onsite improvements. He stated that the vast majority of the costs associated with the offsite improvements are attributable to the permanent development of the site. He said that in conversations with Mr. Weston, he recognizes that everything between the sidewalk and the street is his obligation. He felt that less than 20% of the cost is attributable to the dayworker center. It was his belief that this 20% (approximately \$35,000) was calculated in the dayworker committee's budget as the developer has tentatively agreed to provide a lot of the onsite work that was part of the original onsite utility calculation.

Council Member Chang indicated that this amount was not incorporated into the dayworker committee's budget and that it will need to take a loan in the amount of \$35,000 as a next step.

Council Member Carr felt that more work was needed as the terms are still being negotiated. He said that more than a year ago, when the Council started talking about the dayworker center, it stated that it did not want to be the agency that solves this issue. Unfortunately, it was his belief that the Council would need to get deep into this in order to move forward with something that makes sense and moves the project forward. He suggested that the Council not take action on this item this evening. Further, that the Council ask that the request return as a complete plan instead of a piecemeal plan. He noted that this is something that he has requested before when the different pieces of projects are intertwined between the Granary and the Dayworker Center. He felt that the Council needs to think about the project as a whole and that this needs to come back to the Council.

Mr. Eulo informed the Council that the loan request would return to the Council once Mr. Weston receives the final cost estimates. It is his hope that this information will be obtained within the next week or two. He indicated that the reprogramming of funding will have to be approved by the Santa Clara County Board of Supervisors, noting that it takes a while to get on their agenda before any money can be spent. If delayed this evening, it may result in the request going into the next round of CDBG funds. This would result in funding not being made available until July 2004.

Mr. Toy indicated that reprogramming requires a public hearing. Following the public hearing, staff would forward the City's request to the County. He stated that the County has indicated that it would take two months to get the Board of Supervisors to approve the funding. Whether the Council takes action now or February 18, the Board of Supervisors would approve the request on April or May. July 1 is when a project would be eligible to use new CDBG funds. He said that the longer the Council waits to make a decision, the more sense it makes to apply for funding as part of the CDBG process.

City Manager Tewes suggested that the Council schedule a public hearing for February 18 and if the project is ready to go, the Council can proceed. If the project is not ready to proceed, a funding request would have to wait for next year's funding allocation.

Council Member Carr inquired whether staff has explored County CDBG funds versus the pass through that comes through Morgan Hill. He stated that it was his belief that the City of Los Altos applied for and received County CDBG funds when he was sitting on the County's HCD Board. He noted that the County's CDBG funding application deadline is coming up.

Mr. Toy responded that staff has not investigated the feasibility of County CDBG funding. He said that when the City applies for funds, the City applies for funds that it has. He was not sure whether the dayworker committee explored other funding sources. Once the Council provides staff with direction this evening, staff would schedule a public hearing for the February 18, 2004 meeting. If the Council waits to take action on the item until the February 18, 2004 meeting, staff would not be able to schedule this item for public hearing until March or April 2004. The County would then consider the request sometime in mid-April or May 2004. They would be approving it at the same time they would be approving funding for Fiscal Year 2004-05. Therefore, acting on this item would only save the project a month's time.

Mayor Pro Tempore Sellers noted that the suggestion was to schedule the public hearing for February 18 Council meeting and deal with the whole issue then.

Council Member Carr requested that consideration be as a loan or that part of it be a loan versus reprogramming all of the CDBG funds as these monies come out of another program that will not get done.

Council Member Tate requested that staff perform tight tracking of the approval up to \$50,000 with no release of funds until receipts are reviewed to ensure that existing funds are being spent specifically for the line item being approved and that the expenses are as minimal as possible.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** staff to schedule a public hearing for February 18, 2004.*

28. UPDATE ON MEDICAL SERVICES OBJECTIVES

Joseph Mueller apologized for the DePaul Management team as there was miscommunication. They were thinking in terms of presenting a written report as opposed to a presentation. They had scheduling conflicts and could not be in attendance this evening but that they would be in attendance at a February 18 meeting to make a presentation. He reported on the short term actions/objectives being pursued. Two cardiologists and a physical therapy group have signed leases to move into the medical office building. The recruitment of two internist has taken place. The first internist will move into the medical office facility initially while the second internist will move in as the first practice builds up as it is a husband and wife team. In the next six months, it is expected that the lab and radiology diagnostic will be in place via St. Louise Regional. The time share suite is being designed to be flexible. The suite should be ready within the next 60-90 days to have doctors occupy the facility. He stated that the Daughters of Charity are partnering with an assisted living center being proposed next to Cochrane Road

and that an application should be submitted soon. He would be willing to answer questions this evening or responded to at the February 18 Council meeting. He indicated that a long term goal is to try and achieve an acute care facility within the next three years. He stated that after three years, there would be a review, depending on the development of Coyote Valley on how the medical offices are doing, and how planning is proceeding for the main building. He said that a short term goal is to have the outpatient services plan completed within the next six months and implemented in the next year or two. He indicated that the Daughters of Charity are actively working toward an urgent care facility. He noted that the urgent care facility is to be located in the old emergency room which will make a good walk in urgent care as an interim use.

Mayor Kennedy thanked Mr. Mueller for all his hard work with the Foundation and with the citizens advisory board on this project.

Action: *By consensus, the Council **Received** the Report with Recommendations from the Morgan Hill Community Health Foundation and DePaul Health Center.*

31. APPROVAL OF NEIGHBORHOOD TRAFFIC MANAGEMENT (TRAFFIC CALMING) POLICY

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy felt that this was a very thorough report and that he was encouraged by it. He felt that adopting the neighborhood traffic management calming policy would serve the community well.

Council Member Tate felt that this appears to be a very labor intensive process. In the age of the current budget constraints, he felt that the Council needs to be cautious in the labor intensive area. He indicated that the public input aspect of this issue was incredible. If you live in the Holiday Lake Estates area, you describe where you live by how many speed bumps you go over. Of the neighborhood e-mail list, it was his belief that 80% of the traffic on the e-mail list is about speed bumps.

Mayor Pro Tempore Sellers said that City streets are used as cut throughs for other areas and that there have been concerns raised. Being able to have these kinds of evaluation and elaborate on the options ends up being antedotal and almost mythical in terms of what the options are. He said that in his neighborhood, buses go through more and more and that they should not. He said that it was noted that one of the ways to do traffic calming is to allow for “speed lumps” so that vehicles with larger axels can get through but not the vehicles that exceed 40 miles per hour. He said that these are worth considering short term based on budget constraints. He felt that these issues need to be addressed now so that the City will have these in place when issues come up.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Seller and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Neighborhood Traffic Management Policy.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:56 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL,
SPECIAL REDEVELOPMENT AGENCY MEETING, AND
MORGAN HILL FINANCE AUTHORITY COMMISSION
MINUTES – JANUARY 14, 2004**

CALL TO ORDER

Mayor Pro Tempore/Vice-Chairperson/Vice-President Sellers called the special meeting to order at 5:17 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency/Authority Members Chang, Sellers, Tate
Late: Mayor/Chairman/President Kennedy (arrived at 5:25 p.m.) and
Council/Agency/Authority Member Carr (arrived at 5:40 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

Action: *By consensus, the Council/Agency Board **agreed** to conduct the closed sessions followed by the Architectural and Site Review Board interviews.*

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Cole v. City of Morgan Hill
Case Number: SJ WCAB 0144030

3.

EXISTING LITIGATION:

Legal Authority: Government Code 54956.9(a)
Case Title: Bob Lynch Ford, Inc. v. Timothy Paulus, et al
Case Name/No.: Santa Clara County Superior Court Case No. 1-03-CV 001657
Attendees: City Manager, City Attorney

4.

EXISTING LITIGATION:

Legal Authority:	Government Code 54956.9(a)
Case Title:	Oregon Mutual v. City of Morgan Hill
Case Name/No.:	Santa Clara County Superior Court, Case No. 1-03-CV005398
Attendees:	City Manager, Public Works Director, Special Counsel Mark Strombotne, City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Pro Tempore/Vice-Chairman Sellers opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Pro Tempore/Vice-Chairman Sellers adjourned the meeting to Closed Session at 5:19 p.m.

Mayor/Chairman Kennedy arrived at 5:25 p.m. and participated in closed session discussions.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 5:35 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session and that the Council/Redevelopment Agency would reconvene to closed session at the conclusion of the meeting.

City Council Action

OTHER BUSINESS:

1. **APPOINTMENTS/INTERVIEWS TO THE ARCHITECTURAL AND SITE REVIEW BOARD (ARB) AND CONSIDERATION TO AMEND THE MUNICIPAL CODE REGARDING TERMS OF BOARDS AND COMMISSIONS**

Mayor Kennedy indicated that it would recommend the reappointments of incumbent Board Members Jim Fruit, Jerry Pyle and Rod Martin to the Architectural and Site Review Board.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Carr absent, **Confirmed** the Mayor's Appointment of Incumbent Board Members Jim Fruit, Jerry Pyle and Rod Martin to Serve Terms Expiring March 1, 2005.*

Council Member Carr entered and took his seat on the Dias.

Council Services and Records Manager Torrez presented the staff report, recommending that the Council interview applicants Lori Cain and James Gilbert Carrillo to fill a vacancy on the ARB. She informed the Council that the appointment would be to fill an unexpired term ending March 1, 2004 at which time, the individual appointed would be invited to reapply for an extended two-year term.

The City Council interviewed applicants Lori Cain and James Gilbert Carrillo.

Action: *Based on a ballot vote, Ms. Cain was appointed to fill an unexpired term ending March 1, 2004.*

Mayor Kennedy inquired whether Mr. Carrillo would be interested in serving as a Board alternate to which Mr. Carrillo responded that he would.

Council Member Carr indicated that he was in general support of extending the terms of office to four years. He stated that he would like to have the general discussion of recruitment to fill vacancies on boards, commissions and committees as recruitment impacts the City Clerk's office. He felt that this is a topic that should be discussed as part of the Council's Goal Setting Session.

Action: *By consensus, the City Council **Directed** Staff to Return with a Draft Ordinance Amending the Terms of Office from two to four years, staggering the terms, including the ability for the Council to appoint Mr. Carrillo or other citizens as alternates to the Board.*

City Council and Redevelopment Agency Action

WORKSHOP:

2. WORKSHOP ON REQUEST FOR PROPOSALS FOR THE POLICE FACILITY (17605 MONTEREY ROAD)

Council/Agency Member Tate indicated that the Economic Development Committee (EDC) would be returning to the Council/Agency Board on January 21, 2004 with a recommendation regarding the two proposals before the Council/Agency Board this evening.

Council/Agency Member Carr stated that hearing the presentations this evening was important and that the questions raised will be answered to help the EDC return to the Council/Agency Board with a recommendation.

Director of Business Assistance and Housing Toy presented the staff report. He indicated that since October 2003, the EDC, consisting of Council Members Carr and Tate, have met several times reviewing the proposals for the reuse of the current police station. Since the process started in May

2003, project proponents have been involved in the process for the past nine months. He informed the Council/Agency that staff recommends that each project proponent be given 20 minutes to provide a presentation and answer questions. He indicated that the EDC will save any discussion regarding the proposals until the Council/Agency Board meeting of January 21 where they would return to the Council/Agency Board with a recommendation.

Mayor/Chairman Kennedy outlined the process to be followed this evening, indicating that each project proponent would be given 20 minutes to make a presentation. He clarified that the Council/Agency Board would not be making a decision this evening.

Rick Page addressed his project, indicating that he has provided the Council/Agency reams of documentation and very specific information on his proposal. He identified his project team: Ron Erskin and Craig Kennedy, Coast Range; Charles Weston, Weston-Miles Architects; Mike Milla, Collier International; Larry Kent, Kent Construction; and Bob Stoddard. He stated that his proposal was in response to the City's solicitation to establish a retail restaurant or entertainment venue in the downtown area. It was his goal to adhere to the business and design concept set forth by the Council/Agency Board in the Redevelopment Vision and Plan constructed with various consultants, business leaders and community leaders/citizens. The team tried to integrate the operational aspect of the brew house restaurant into the community and incorporate a spirit of giving back to the community. Also, to create a menu of financial structures that could make a project of this scope and complexity work for everyone. He felt that the genesis of this proposal achieved these goals. He identified the advantages of his proposal as follows: 1) an experienced restaurant franchise team is willing to take the risk and operate in this building; 2) capitalization – this proposal plans to invest \$2.6 million in the restaurant and the building; 3) risk management – he has a separate developer and a separate operator. Therefore, if the restaurant is in trouble, the building would still function. 4) This is a local team and is vested in the community. 5) Community spirit – he is pledging up to \$10,000 as the business grows to local youths for scholarships and outreach programs. He indicated that he has met with Daryl Manning of the Community Foundation, working on a proposal such that should this project come to fruition, the Community Foundation would match the \$10,000. This would be equal to \$20,000 in annual pledges/donations to youth. Benefits of his proposal include: 1) Took things verbatim out of the City's downtown vision and redevelopment plan and incorporating them into his design and business concept. 2) There is an estimated \$20,000-\$30,000 in incremental annual sales tax to the City as part of this proposal. 3) Approximately 60 new jobs to be created for local workers with an estimated \$750,000 in salaries and benefits that would go into the economy. 4) With 1.5 – 2 table turns per day, the project will draw approximately 125,000 visits to the downtown annually. He felt that the 1.5-2 table turns is a realistic number. 5) He felt that the design establishes a northern gateway that incorporates some of the best elements of the best architecture seen in the downtown.

Ron Erksin indicated that this is a two party proposal as he would be acting as the operator. He introduced Craig Kennedy, a CEO and partner in Coast Range Brewing Company, indicating that he is the founder and president. Bob Stoddard is the founder and partner in the Stoddard Restaurants in Sunnyvale and Campbell. He stated that this is a local team and that he has been in the community for 21-years. He was a builder in Morgan Hill for a 10-year period, building approximately 60 homes in the

community. Mr. Kennedy has lived in the south county for approximately 16 years (12 in Gilroy and 4 years in Morgan Hill). Bob Stoddard, while no longer living in Morgan Hill, still has children in Morgan Hill and is attached to the community, spending a lot of time here. He indicated that the team calls Morgan Hill its home. He said that an important element to the trio is experience. When Mr. Page first approached him about this idea, he was not interested initially as he knows nothing about restaurants but knows beer. When Mr. Stoddard was mentioned, he felt that he was the missing link to the proposal as he is experienced in the restaurant business. He said that each member of the team are entrepreneurs who enjoy successes in businesses. The team understands that an effort like this does not just happen, but would take a lot of effort. He said that the team has a great deal of respect and understanding for the challenges of opening this restaurant. The team envisions this to be a mid scale, affordable restaurant and that good food will be served with a dynamic menu and casual atmosphere with a focus on comfort. This would be a place that individuals will want to linger. Pool tables and video games are not being proposed as a family dining experience is proposed that will focus on fresh locally brewed beer. The team is looking at ways to generate interest in this restaurant. This may result in getting involved in youth sports, or reaching out to businesses in the various local charitable groups or clubs. Anyway that the team can reach out to businesses, groups, and/or families is something that they would have to do on an active basis. He felt that this would be important for the success of this business. He indicated that Mr. Stoddard has suggested family theme nights. The team is looking at ways to keep the place interesting and dynamic. He stated that the proposal is a brew house and not a brewery. He said that there is still an interest in providing flavourful beers and that the team feels that the necessity to see the hardware that makes beer on the premise is not important and may be a liability from a business stand point. He said that there is a certain amount of square footage that would take away tables that generates income and limits flexibility should trends change. There is also the overhead of a brewery, including sewage effluent and a capital cost of installing a brewery. He stated that the team wants to make the restaurant focus on fresh beers but that beer would not be produced on site. He felt that this is a strong team with experience and an understanding of this business combined with a concept that the team believes will enhance chances of success and stability at this site.

Council/Agency Chang indicated that she spoke to both project proponents. She inquired as to the business term and what is being offered by this proposal to the City.

Mr. Page responded that he has three options that he is proposing. In going through the proposal, the team thought a lot about the financial conditions. He said that if the objective of the Council/Agency Board were to bank as much money as possible immediately, he did not believe that this would be what the City would want to do with the building. He felt that the City may want to renovate the building and turn it into an office building and not downsize feasible space. It was the team's belief that the City could get up to \$1 million for the property. However, the Council chose to solicit RFPs for projects that would adhere to the development plan. When they structured the financials, they looked at what the leasable space that would support a restaurant and not over burden it. They also looked at the development cost to convert the building from its current use to a restaurant/entertainment use. When they did this, they downsized the leasable space which potentially lowered the building's value. He noted that in the Council's packet were two different quotes provided by Larry Kent based on the architectural design that comes up to approximately \$1.2 million. He said that option 1 does not use any

RDA monies but asks the Council to grant the property because the post redevelopment value is equal to the cost of redeveloping the building. He stated that he would agree to pay the necessary fees. Therefore, he is not asking for the City to discount the fees. He would agree to the revenue generations for City sales tax and property taxes. He also offered a second proposal but indicated that a bank will not finance a proposal that costs more than the value of the property. He indicated that he has worked with a bank on a financing proposal. Should the City want more for the building, thought has to be given to finding other ways to finance the proposal so that it pencils in. He stated that he is looking for 10%-15% rate that is fair and reasonable, lower than what most developers would ask for. He informed the Council/Agency that he structured two additional options: one for \$350,000 and the other for \$500,000. He stated that the higher the price you go, the more burdensome it becomes financially and that he would have to figure out a way to make it work. If he had to pay \$1 million for the building and that it costs \$1.2 million to redevelop the property, this would result in a cost of \$2.2 million and that he would have to charge \$3 per square feet. He felt that this was not reasonable as far as market rates for a lease are concerned. In order for a brew pub to be viable, they would have to charge more for food and/or they would have to have an average of four table turns per day. He felt that this would be unrealistic. He stated that his options are structured so that they pencil in for the brew pub, making the use viable to give them the best chance to be successful and works within the financial constraints of the bank in order to have a reasonable rate of return.

Council Member Chang requested that Mr. Page elaborate on options 2 and 3.

Mr. Page indicated that with option 2, he would pay \$350,000 for the property and that he would ask the City to finance the deal because it falls out of the bank's lending parameters. This would be a 2% loan in principal and interest over a five year period at which time he would refinance the property. In option 3, he would agree to pay \$500,000 for the building. The City would finance the loan and that it would be an interest only loan. He would take the cash that is generated from the project and bank it in order to meet the loan to value. He stated that both proposals are close to being refined but that he has not gotten close to exclusive negotiations yet.

Geno Acevedo, El Toro Brewing Company, indicated that his proposal is more than a concept; it is a detailed plan, a vision that has been developed and evolved over 14 years. He stated that he proposes to operate a brew pub, with a restaurant and functional on site brewery. To be featured are fresh high quality, award winning beer and food at moderate prices. His proposal would include the following: large appetizer menu, foosball, darts, evening entertainment, dancing, bar, big screen, and several televisions. He presented a visual presentation to give a better visual impression on how he plans to transform the building into a brew pub. He indicated that the design proposes to make a gateway statement. He proposes to use both modern (e.g., glass and steel) and classic elements (e.g., brick work, shaped facades, lots of windows, and a gateway statement mural, if supported by the Council and approved by the ARB). He depicted the pub layout and bar, indicating that an important feature of the bar area is the incorporation of the poppy jasper rock into the bar. Also proposed is the incorporation of a stage and dance floor area. The brew house would be seen from the outside and up to a 90-seat patio area is proposed. He indicated that the former Bank of America vault would be set aside for private parties, meetings and special occasions. The upstairs area would afford a large meeting room and

includes a dining area or can be used for receptions or a VIP area for special events. He stated that the office would overlook the entire operation from the upstairs area. He stated that a bridge way is designed to go between the game area and the dining area upstairs. He stated that the brew house proposed would be aesthetically pleasing, would create an ambiance and would be functional. He would be able to brew new cool brews that he cannot do at the scale that he does now. The facility would be used to entice home brew clubs and their reestablishment. He stated that he intends to hire another brewer to do the brew work. He indicated that he has won several awards over the years.

Mr. Acevedo addressed his Business Plan, indicating that it was based on industry accepted and developed data. He indicated that he has taken his data from the current National Restaurant Association and Operational report of 2002 and has applied conservative numbers to his business plan. He felt that he has shown that even using conservative numbers that his proposal can be very successful. He indicated that he also used other reliable sources for his data to develop his business plan. He indicated that he recently received a letter of interest from Heritage Bank. The pro forma shows that his proposed use would be profitable, even at 1.5 to 2 table turns. He indicated that at 1.5 table turns is where his proposal becomes profitable. He felt that the 1.5 table turns should easily be attained using the industry data, given the demographics and population of Morgan Hill and the surrounding areas. He felt that keeping the start up costs down will be the key to helping his proposal succeed. He would acquire first class used equipment that can be found in public auctions.

Mr. Acevedo identified activities to be incorporated to attract individuals to his proposed establishment such as darts, foosball, the televisions, music, dancing, and stand up comedians. He addressed his proposed “Morgan Hill History Mural” which is the naming of the El Toro Mountain based on the story of Bret Hart visiting Martin Murphy. He felt that the mural could be considered public art. He indicated that he helped develop the downtown design plan and that he has incorporated items from the plan into his proposal. He said that the pub’s interior would be multi functional, high energy and would provide something for everyone. An idea is being considered in using pub carriage rides through the downtown as part of the marketing ideas to attract and keep loyal customers, friends and visitors. He stated that he has committed to the betterment of the community and that this would only increase with his brew pub influence. He stated that he helps schools and would continue to do so.

Mayor/Chairman Kennedy said that it was mentioned that having a brew pub with brewing activity on site was passé.

Mr. Acevedo said that this was an incorrect statement. He felt that brewing on site would create ambiance and excitement. If Page Holding is chosen, he felt that it would be just another bar and grille. He stated that he and his wife will be the main hands on operators of the restaurant. He said that he has spoken to general managers in the trade. He stated that there are a lot of food people out there who are general managers, managers, and individuals with experience who would be recruited. He has spoken to the principals at Mission College and that he could go there to help select management as well as a chef.

Council/Agency Member Chang stated that she was somewhat confused about the financing plan. She requested that Mr. Acevedo identify his financial plan.

Mr. Acevedo said that a lot of the information that he would like to cover would have to be covered under the exclusive right to negotiate but that he would cover the information he has already submitted to clarify points. He stated that he offered \$20 per square foot but that he did not offer anything for the building. He explained that the building has value but that the value is offset by the amount of improvements would be necessary to transform the building from the office/public use into a restaurant. He would also have to seismically refit the building and make it ADA capable. In having to make these extensive renovations, he has assigned zero value to the building. However, the \$20 per square foot was assigned for the land and that the land is approximately $\frac{3}{4}$ of an acre. This would equate to a \$650,000 offer. He stated that his budget is \$1.8 million and that he can absorb some more. He stated that he was confident that he can bring the proposal in at \$1.75 million. He indicated that there were other means of financing as well. He said that the bank may be willing to lend if you only use one source of equity. However, if there are multi sources of equity, the bank will loan you based on what your income can show and the confidence level of the business plan as well the collateral that you have to present.

Council//Agency Member Chang inquired how the proposal would work if the cost exceeded \$1.8 million.

Mr. Acevedo responded that if the proposal exceeds his budget, he would have to tap into the family's equity. He indicated that his corporation is family held and that he has all his family members to seek financial assistance. He said that depending on how things are presented and what other incentives could be offered by the City through negotiations, the numbers could change, going up or down depending on whether fees are waived, deferred or how things are negotiated. He indicated that he can proceed with the project with more than \$1.8 million.

Mayor Pro Tempore/Vice-chair Sellers said that the Council/Agency Board would be discussing the proposals again next week. He stated that it would be a difficult decision to choose a proposal. He appreciated the information provided by both proposers. He said that the public will not ask why the Council/Redevelopment Agency chose a particular concept but will ask why the City gave away a City asset and chose this direction. He felt that the Council/Agency Board will have to clearly define what its thoughts are and identify at what point the proposal is viable or not viable and a good return investment for the City. He requested that the economic viability be addressed by both project proponents. He wanted to make sure that a project selected will be a viable proposal based on the significance of the location and that the City is going in a specific direction with the ability to go in another direction should the business not prosper. It is his hope that the Council/Agency Board will identify short term and long term goals to make the proposal prosper. He thanked both groups for the submittal of their creative proposals.

Mayor/Chairman Kennedy stated the Council/Agency Board's appreciation of hearing the proposals presented by both teams as they were well done presentations.

Mayor/Chairman Kennedy opened the floor to public comment.

Rich Burgin, Rosey's at the Beach, stated that he has known about the offers for some time now. However, a few weeks ago, it came to his attention that this may be some type of give away by the City as far as the building, low interest loans or funds being made available. He said that he would like to keep an eye on this process to make sure that this is not the case. As far as the restaurant usage, he said that if individuals come in and pay fair prices and bring in their own project, he would be behind them 100% and help them in whatever he can. However, if the playing field is not levelled where an individual is given a \$1 million subsidy, this is not an action that he would support.

Mayor/Chairman Kennedy indicated that the Council/Agency Board would be making a decision on the proposals at their meeting of January 21, 2004 and that there would be more opportunity for additional public comment at that time as well.

Action: *The Council/Agency Board **Received** Presentations on the Two Proposals for Police Facility at 17605 Monterey Road. The final Subcommittee decision will be presented at the Council meeting of January 21, 2004.*

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation Mayor/Chairperson Kennedy, Einar Anderson led the Pledge of Allegiance.

INTRODUCTION

Recreation and Community Services Manager Spier introduced recently hired Recreation Supervisor for the Aquatics Center, Aaron Himelson.

CITY COUNCIL REPORT

Council Member Chang reported that the Dayworker Center Committee pulled permits and are scheduled to assemble the units donated by the Gilroy Unified School District on January 19. It is her hope that within a week, the units would be moved onto the current site. She stated that it was her understanding that the interim use ordinance was passed by the Planning Commission and that it will be coming before the Council for review and approval soon. She indicated that a fundraiser event was recently held and that the results were not as hoped. She stated that it is her hope that within 2 months a grand opening event will be held for the dayworker center.

CITY MANAGER REPORT

City Manager Tewes reported that it is becoming difficult for the City to live within its means in light of things that are taking place at the State level. He said that due to the actions of the previous governor and legislature in adopting the state budget, it was necessary for the City to estimate a reduction in revenue attributable to the motor Vehicle License Fee (VLF) by approximately \$400,000. The new

governor took action to restore the backfill of the VLF. With this action, it appears that the City will lose another \$200,000 in this current fiscal year attributable to all of the mechanics in the VLF. Therefore, by the end of the fiscal year (June 2004), the City will not receive \$600,000 that the City otherwise counted upon. In proposing the State budget for next year, the governor has proposed an approach that has been used in the past by other governors and legislatures to shift property tax revenues that would otherwise go to cities and counties. Unlike the VLF, the governor is proposing an ongoing shift of property tax. He said that this property tax shift and other minor issues being proposed would have a continuing affect in the loss of another \$400,000 a year in the City's budget. When staff works on the budget to be recommended to the Council in May 2004, difficult choices will need to be made about the level of services and the way in which they are provided to the community. He stated that the governor's proposal will have an adverse impact on the City's revenues to the tune of approximately \$400,000 this year and each continuing year thereafter if his proposal is enacted.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not listed on the agenda.

Einar Anderson addressed the need for a new library in Morgan Hill. He thanked Mayor Kennedy, the City Council, and staff for their continued contribution in planning for a new library and for helping in the presentation of proposals at the State level for funding from the Library Bond Act. He said that unfortunately, these efforts have not produced the desired results to date. If the City does not receive an award of funding in the 3rd bond application, the need still remains. He noted that the existing library was built in 1974 and served a population of 7,500. Now, the City has a population of over 42,000 with an expected population of 53,000 in 2020. He did not believe that the existing facility would accommodate future needs. He noted that the current library has 50% of the population with library cards, averaging approximately 1,000 patrons per day. Many times the library is so crowded that you cannot use a computer or find a place to sit. He felt that Morgan Hill will fall behind other cities in the County if the City does not address these needs. He identified the new libraries that have been built within the County and felt that there were ways to achieve the construction of a new library. He requested that the Council explore alternative funding to construct a new library such as reallocation of RDA funds or finding other resources in order to be able to satisfy the need of a new library.

Roger Knopf addressed the library facility and funding for continued library operation and staffing. He said that he has a sense that the City is coming to the issue of needing to prioritize funding sources available for several public facilities. He recommended that the library be the first choice for funding as opposed to some of the other choices before the City. He stated that he has always been a supporter of public education and felt that a community library is an important element of education for all ages. He

stated that he strongly supports the construction of a new library. He indicated that the County has placed Measure B on the March 2, 2004 ballot that would provide additional funding over a seven year period for the continuation of the present tax to support the operation and staffing at about the current level. If the current tax is not approved for extension in March, the funding source will go away; resulting in the library operating hours decreasing from 54-hours per week to approximately 30-hours per week. This would result in the operation of a new or existing library facility at 55% of where the City is today. As the co-chair of the campaign for Measure B with Jeanne Gregg, he invited everyone in the community to a campaign kickoff to be held on Saturday, January 17 at 1 p.m. at the Morgan Hill House.

Jeanne Gregg, chairperson for the Library Commission and co-chair of the tax campaign for Measure B, stated that should the library bond measure not pass, the library's hours would go from 54 hours per week to 30-32 hours per week. She said that this is a big reduction and that it would take a lot of work on everyone's part to get this measure passed. She thanked Mayor Kennedy and Council Member Tate for their sincere regard for the whole issue of the library as they are concerned about the library and want to do whatever is possible to get an improved facility. She stated that she just spoke with Nancy Howe, supervisor of the Morgan Hill Library, who advised her that there is only one library in the entire Morgan Hill School District. Therefore, the City's library serves de facto as a school library. She felt that it was important to realize that the library is not only a recreational facility but serves serious purposes.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3-5, as follows:*

3. **MEASURE B – A BALLOT MEASURE TO CONTINUE SUPPORT FOR SANTA CLARA COUNTY LIBRARIES**
Action: **Supported** Resolution No. 5756 for the Measure B Ballot for Operational Library Support.
4. **RESOLUTION FOR CYCLE III PROPOSITION 14 LIBRARY BOND ACT GRANT APPLICATION**
Action: **Adopted** Resolution No. 5757, Authorizing City Staff to Submit Grant Application to the State of California Office of Library Construction on or Before January 16, 2004.
5. **CONTRACT FOR CONSULTANT SERVICES FOR ENVIRONMENTAL REVIEW OF THE IMPLEMENTATION OF THE DOWNTOWN DESIGN PLAN**

Action: 1) **Approved** a Contract for Consultant Services to Complete the Downtown Plan Environmental Review; and 2) **Authorized** the City Manager to Execute a Consultant Services Agreement with David J. Powers & Associates for Contract Consultant Services at a Cost Not to exceed \$109,000; Subject to Review and Approval by the City Attorney.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 6-7, as follows:

6. **MINUTES FOR JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF DECEMBER 10, 2003**

Action: 1) **Approved** the minutes as submitted.

7. **MINUTES FOR JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF DECEMBER 17, 2003**

Action: 1) **Approved** the minutes as submitted.

Council Member Tate noted that the action taken with Consent Calendar item 3 is one whereby the Council stated its endorsement of Measure B that would fund the operation of the library.

City Council Action

PUBLIC HEARINGS:

8. **APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE P APPLICATION MP-03-09. APPEAL APPLICATION AP-03-07: WEST MAIN-VIERRA**

Mayor Pro Tempore Sellers recused himself from this item due to a potential conflict of interest. He stepped away from the Dias.

Council Member Chang indicated that she and City Clerk Torrez spoke to the Fair Political Practices Commission and was advised that she does not have a conflict of interest as it relates to this item.

Community Development Director Bischoff presented the staff report. He informed the Council that maps developed before 2000 and before the City had a GIS system were done by hand and that the scales of the maps were fairly small. He stated that the location of the separation between areas that might be open space or any other zoning districts is somewhat general. He said that where it was the intent of the City's general plan map to follow a line to define the 500 foot contour and define the area

that should be preserved in open space, the line of separation was located as identified. Pursuant to the City's general plan, it was the intent that only the area above the 500 foot contour line was supposed to be zoned open space and everything below the 500 foot contour line was to be zoned single family residential. Because of the scale of the maps and the inaccuracies of the drafting, the line was placed in an area defined by staff. He stated that the issue before the Council that will be raised by the appellant is that the City should be following the intent of the General Plan as opposed to the letter of the law or the actual location of where the line is drawn on the map presently. He informed the Council that it can overturn staff's decision and grant the appeal, therefore, allowing the project to compete under Measure P. The Council can deny the appeal or approve the appeal with modifications such as requiring that all building envelopes be relocated such that they will be in the area designated R-1. He indicated that it was brought to staff's attention that there was an error in the resolution before the Council relating to conflicting language. Staff has provided the Council with a revised resolution that would approve the appeal request; making findings that it is consistent with the City's general plan.

Mayor Kennedy indicated that in viewing a large scaled copy of the General Plan Map, he noted that it does not contain a line but is color coded. He stated that he would consider the map to be a broad brushed coloring rather than a hard line. He inquired why the Planning Commission did not recommend that the application proceed under the Measure P competition.

Mr. Bischoff indicated that the Planning Commission has not reviewed the appeal application as Measure P states that staff's rejection of an application is appealable directly to the City Council.

Council Member Chang inquired what the 500 foot contour line would show if it was updated with technological equipment at a regular scale.

Mr. Bischoff responded that the City currently has a GIS system that allows staff to create maps that are more accurate. It is his hope that it would be close to following the identified 500 foot contour line. He indicated that the map before the Council is at a scale of 1"=30 feet. He could not identify the exact line but felt that it closely follows the line being shown this evening versus the existing map.

Mayor Kennedy opened the public hearing.

Bruce Tichinin informed the City Council that he represents Mr. Vierra, the applicant. He indicated that the project engineer, Bill McClintock, and his partner in the project, Randy Barbaglia, were in attendance to answer any questions that he could not answer. He felt that Mr. Bischoff rendered an accurate statement of what has taken place. He said that the legal issue being presented to the Council is whether or not in the interpretation of the General Plan, you follow the intention of the City Council regarding where the demarcation for the open space in residential should be, or you follow the impression of the map maker in rendering that intention. He cited the rule of law that he felt applies; that being that the Council should act as if what it intended actually occurred rather than following a mistake. He depicted the 4.5 acre parcel and a 20-acre parcel that is expected to be acquired from the property owner to place in permanent open space and permanent protection.

City Attorney Leichter said that although the issue before the Council is one of whether this proposal complies with the General Plan. She noted that Mr. Tichinin has raised issues about the intent versus the actual language. She indicated that she could address these if the Council so desires. She said that there is also a provision in Measure P that provides, in precise details, that the lands within the City that are designated as open space in the City's general plan land use circulation element map, as amended through March 1, 1990, are reaffirmed and readopted through fiscal year 2009-2010. Therefore, the Council would need to keep this provision of Measure P in mind when it is determining this appeal as the action that the Council takes on the appeal may affect this provision.

Mayor Kennedy said that the language in the general plan clearly states a 50-foot profile line. Therefore, he felt that there may be a conflict between Measure P and the general plan statement.

City Attorney Leichter stated that although Mr. Tichinin has touched upon certain elements of traditional statutory construction laws, she said that there are also other rules of statutory construction law that would also allow the Council to find that those provisions are not inconsistent and that the provision regarding the goal statement supercedes the action statement that talks about the specific 500 foot line. It was her belief that it is not a clear cut question of law as presented by Mr. Tichinin as there are viable arguments that the general plan is in fact consistent and the provisions can be consistent with each other.

Jim Kavitski indicated that he is a new homeowner and resides at the end of West Main Street. He stated that there were several factors that caused him to buy a home in this area; one of which was the low density building. He stated that he bought his home based on the beautiful area around it, particularly El Toro and the open fields. In the course of the home purchase, he became aware that the area around the field was zoned for residential use. However, he was led to believe that the area was zoned open space. Therefore, he was not expecting that there would be dense development going in. He requested that the Council maintain the existing zoning.

Susan Bernadini informed the Council that last summer, she and her husband purchased their residence located at 900 West Main. She felt that their property was the one most affected by the Measure P application. She said that the site is a flag lot and that the front of her home faces this property. She researched the zoning of the surrounding area before purchasing her home. She read the description of the two parcels as depicted in the real estate advertisement. She stated that she spoke to Joan Hall with the Planning division to find out whether the listing was consistent with the general plan and the process for development should someone purchase the parcel. She was told that the property was zoned open space and would have to apply for Measure P allocations, an 18-24 month process. She was advised that the zoning for one acre lots. As the parcel is 4.5 acres, her math told her that this would result in approximately 3-4 homes. She noted that the proposal is for six homes. She said that the Council would hear from owners that they purchased homes in reliance of the City's general plan (open space). She understood that the general plan might change in 2009-2010. She felt that the development was an attempt to bypass and shorten the amount of time to wait for development. She knew that the property was for sale and had no objections to development based on the general plan. She stated that she did not know that a Measure P application was in the process until she saw surveyors on the property. She

expressed concern that the homeowners in the area were not aware of the Measure P application submittal. She requested that the homeowners be placed on a mailing list for future notification for any Measure P application or land use entitlement for the property. She commended the Planning Director for taking a literal interpretation of the general plan because that is what she did.

Council Member Carr inquired whether the 20 acres on the face of El Toro is in the Williamson Act.

Mr. Tichinin responded that the 20-acre parcel is in the Williamson Act but that he could not state that it was in agricultural use. He indicated that the City has received an appraisal of the 20 acre parcel in use as open space and that it was his understanding, for the purposes of condemnation, that the land would have to be acquired according to its value for a single building site. It was his belief that this qualifies and that the partners would be happy to spend the money to prove this fact, if necessary. He indicated that the 20-acre parcel is located in the county and that county zoning would apply. In order to develop a residence on the 20 acres, it must be demonstrated that the lot meets requirements and felt that it would be easy to meet these requirements (e.g., the site has a well that produces at a satisfactory rate and a septic tank leech field area). In order to commence negotiations, it was requested that an appraisal be prepared by the same appraiser used by the City for the open space appraisal. He expects that this would be rendered by the end of January. It is expected that the appraisal will come in at about \$850,000. It was his understanding that there is approximately \$300,000 in Open Space Authority funds that belong to the City that can be applied toward the purchase of scenic open space on El Toro. He said that it was his understanding that there was \$200,000 of in lieu Transfer Development Credits (TDCs) that have been accruing for the specific purpose of purchasing land on El Toro. He stated that he understood that the project would be given credits for 4 TDCs if they did not develop the parcel and conveyed it to the City for open space. He said that TDCs can be sold for approximately \$140,000. He stated that there may be a possibility that they may be able to reduce some of the purchase price through tax deductions that are available to entities that contribute lands to open space or parks. He stated that he was confident that the Measure P proponents can close the gap with the City as soon as possible.

City Attorney Leichter pointed out that the basis of the appeal limits the Council to whether this proposal complies with the general plan. Under section 18.78.100 of the Municipal code, whether the Measure P proponent plans to develop the open space is not before the Council and cannot be considered by the Council as the basis for the appeal. She stated that she would be willing to clarify and offer her interpretation of the situation to Mr. Tichinin.

Mr. Tichinin said that Government Code Section 65300.5 states that the General Plan is required to be an internally consistent and compatible statement of policies for land use. He felt that an inconsistency existed that could not be more clearly illustrated than by the two lines depicted on the map that demonstrate the 500 foot contour line. He requested that the Council follow the intention of its action when it established the demarcation or the acknowledged impression of the map maker in the rendering of the contour line.

Council Member Carr inquired whether there was a suggestion on how the proposed dedicated open space through the Acton property would be accessed.

Mr. Tichinin identified an existing access easement that is 20-feet wide to access the 20-acre parcel for hiking up El Toro.

Mr. Tichinin said that if the Council was to rely on the City Attorney's interpretation of rejecting the application, he requested that the basis be made a part of the record so that he can respond. His comment on the rule of error is also provided for in the General Plan. Had Mr. and Ms. Bernidini checked the General Plan versus the statements contained in real estate description, it would reduce the risk of error. Regarding Mr. Kavitski, he noted that he purchased his lot in reliance that large lots similar to his would be constructed, noting that Mr. Vierra's lots are proposed at three times the size of his lot. He stated that the developer would like to work with all neighbors.

City Attorney Leichter stated that it was her belief that there is an interpretation that is consistent. She said that the provision cited by Mr. Tichinin is an introductory paragraph to the open space goal under the Open Space and Conservation Element that states that lands designated as open space in the Land Use diagram shall remain as open space city-wide. She stated that the conflicting provision being referred to by Mr. Tichinin can be found in Action 4.1 of the Hillside Element. She indicated that this is a subset of the goal that requires preservation of El Toro Mountain in open space above the 500-foot contour line. She said that these can easily be reconciled by stating that you have to have open space depicted on the map. She said that all of the land on El Toro above 500 feet needs to remain as open space. Therefore, this is a consistent interpretation of these provisions. With regards to the intention of the City Council, she felt that the Council has amply demonstrated, by the fact that it adopted Measure P and the General Plan on two separate occasions with the same language, that it saw no need to clarify. She said that the final element of statutory interpretation is that the action is a subset of the general plan which will be subservient to the statement of the overall goals, therefore, this will govern. However, she said that Mr. Tichinin may have a slight argument because the 500 foot line is more specific in nature and perhaps should govern.

Mr. Bischoff indicated that the City's general plan shows the parcel designated single family low which allows for densities up to 3 units per acre. He informed the Council that the 500 foot contour language has been contained in the General plan since 1980.

Council Member Chang noted that it was stated that the City did not have the equipment to precisely depict the 500 foot contour line and this resulted in the contour line being drawn as depicted. Staff further indicated that had a GIS system been used, the line would have been drawn more accurately.

Mr. Bischoff indicated that had a GIS system been used, the line would closely follow the 500 foot contour line. He identified the approximate dividing line between areas designated for open space and single family. He indicated that the line followed may have been drawn as a drafting error or an approximation given the scale of City maps. He noted that one of the speakers made reference to notice. He indicated that the City has a procedure whereby any Measure P application that is processed requires notice be provided to property owners within 300 feet of the Measure P property. The reason neighbors did not receive notice of this Measure P application is attributable to the fact that staff has not accepted

the application for processing. Should the Council decide on the appeal and direct staff to process the application, notice will be provided to the neighbors when the hearings are held before the Planning Commission regarding this and any other applications. He noted that the 20-acre parcel is located above the 25% slope and is within the County. He indicated that some of the County's regulations state that you can build a home up to 30% slope. He said that even though the slope of the parcel is over 20%, you can probably find areas that are less than 20% slope.

Mayor Kennedy indicated that he met with Mr. Tichinin and received an e-mail from one of the nearby neighbors. He felt that should the Council accept the argument that the City should be using the profile line, it should apply to the entire general plan map with respect to El Toro and anywhere else where the City has language that calls out a specific contour line. It was his belief that should the Council make the change here, it would need to be made everywhere in the City for consistency sake.

City Attorney Leichter said that if the City was to use this construction and ignore Measure P provisions, then it would apply to the El Toro 500 foot line, wherever that occurs.

Mr. Bischoff indicated that Measure P does not call for appeals to go before the Planning Commission. He stated that Measure P specifically states that appeals to staff decisions go directly to the City Council. He indicated that the Council has the authority to refer this matter back to the Planning Commission.

Mayor Kennedy felt that it would make sense to refer the appeal to the Planning Commission.

At the request of Council Member Carr, Mr. Bischoff walked the Council through what would happen should the Council approve the appeal. He indicated that staff accepted applications for Measure P several months ago. He stated that the City cannot afford to wait until this one issue is resolved before staff starts scoring other applications. As a general policy, staff has gone ahead and scored this project along with the other Measure P applications in anticipation of the Council concurring with the appeal. The Measure P application process would be such that should the Council determine that the project should be processed, staff would continue with the scoring process. He indicated that Measure P hearings are scheduled to be heard before the Planning Commission in the not too distant future. The Planning Commission would evaluate the relative scoring of all the projects and decide who will receive allocations.

Council Member Carr clarified that the Council was not granting allocations this evening and that the applicant is requesting to be allowed to be a part of the competition process that starts an 18-24 month process.

Mr. Kavitski inquired whether the 500-foot contour line was the ultimate deciding factor that determines open space versus non open space.

Ms. Leichter said that under any construction of Measure P and the General Plan provisions, construction is allowed only up to the 500-foot contour line.

No further comments being offered, the public hearing was closed.

Council Member Tate felt that this was a situation where there were two legal view points on the situation and that he did not know which one was the correct one. It was his belief that the intent was for the 500 foot line but that it does not mean that you automatically approve an action that would violate the law. He recommended that an outside legal opinion from the court be sought to decide the proper interpretation given what is in place at this time. The Council would then abide by whatever court decision is rendered. Having heard both sides and understanding both sides, he could not legally decide what is right. Therefore, having a court rule on what is right would be a good course of action.

Council Member Chang said that in reading the general plan, it states the 500 foot contour line. If the City made a mistake and drew a line in the wrong place, even if incorporated in Measure P, she felt that the line should be corrected.

Council Member Carr stated that he too met with the appellant's representatives and received the same e-mail from one of the residents addressed by Mayor Kennedy. He said that it was the City's intent to follow the contour line and not a straight line when the City drafted the general plan. However, he was not sure if this answers the question of how this and Measure P works together in this case. He noted that the Council has heard some competing arguments. He said that he heard Mr. Tichinin state that he would like to hear more specifically the record so that he can respond to it. He did not know if this would help the Council or not but that this might be something that would give the Council further information. He noted that the Council continues to hear from property owners, when purchasing property, that they are being given misinformation. He understands that a lot of this misinformation has happened as a result of real estate agents telling home buyers that the adjacent property is going to be a park instead of a developed piece of property one day. He was not sure how to address this on the private side. It was his hope that this practice would end soon. He felt that the Council needs to address how it will answer questions from private citizens that are calling city hall and the answers being provided by staff at the counter to individuals interested in buying homes and investing their hard earned money in Morgan Hill. He felt that this was an issue where he understands where there would be some confusion about what the answer would be. However, he felt that the City needs to work on how it deals with customer service. He noted that Council Member Tate has suggested a way that the Council can get another opinion. However, he was not exactly sure of the mechanics of how this would work and felt that this is the direction the Council should take as the Council will be struggling on how it addresses this issue between the intent of the General Plan and the intent of Measure P.

Council Member Tate stated that he too met with the appellant's representative and received an e-mail from one of the adjacent residents. He felt that the City could proceed in parallel with the Measure P application, treating it as though it was potentially in the competition.

Mayor Kennedy felt that there was an important precedent issue in this case that is important, noting that the issue does not solely relate to this small parcel but that it is all of El Toro that is at issue where the lines are drawn. He felt that that the 500-foot contour line needs to be addressed.

Council Member Chang agreed that the 500-foot contour line needs to be addressed as the urban limit line committee is addressing the 490-foot contour line at Paradise Valley as well as the 480-foot contour line on the east side of the hills.

Mayor Kennedy stated that the City needs to be consistent. He felt that Council Member Chang raised a good point as the urban limit line committee is using contour lines very extensively to establish maximum heights as far as the ultimate urban limit line is concerned. He felt that the City needs to be consistent throughout. Therefore, he agreed with the suggestion of seeking a legal opinion and taking time to resolve this issue.

Mr. Tichinin stated that it was his belief that it was incorrect, factually, that the Council's decision on this matter will set a precedent as it was his understanding that this is the only place on the map, regarding El Toro, where there is a conflict between the contour line and the mapping. He did not believe that there was another parcel through which the 500 foot contour line goes that is zoned residential.

Mr. Bischoff stated that he could not make the representation that this is the only place where a conflict exists.

Mayor Kennedy said that as he looks at the general plan map, there are a lot of straight lines across parcel lines.

City Attorney Leichter summarized what she believes are the Council's legal options in this case: 1) deny the appeal; 2) grant the appeal. As Mr. Tichinin believes that there is little precedential value, she did not believe that he would object to indemnifying the City on any future challenges premised on the decision to be taken by the Council this evening or a challenge directly to this decision. 3) Direct either she or Mr. Tichinin to file a declaratory relief action with the court to seek judicial determination of the statutory construction of these conflicting provisions. She stated that the Council could continue to process the Measure P application so that it does not lose focus and put the appeal on abeyance until the court renders a decision.

Council Member Tate stated that he would prefer to proceed with the third action. He stated that he wanted to go on record in support of establishing an accurate 500 foot contour line.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Sellers absent, **Directed** the City Attorney to seek declaratory relief action by the court.*

Ms. Bernadini indicated that it was her belief that by the action taken this evening by the Council is that the appeal would be held in abeyance, yet she knows that there has been a denial of the application. She inquired whether the Council's action would leave the application in abeyance or would the application

proceed in the competition even though there is a denial of the application while the City awaits a court ruling.

City Attorney Leichter concurred with Ms. Bernadini's summation. She said that whatever the court determines would affect how the application is ultimately processed. She stated that the application would need to keep pace in the competition but would not be awarded points or development allocations until such time that the court renders a decision. She indicated that she would clarify the process to Ms. Bernadini.

Mayor Pro Tempore Sellers resumed his seat on the dais.

9. **RESOLUTION AUTHORIZING THE SANTA CLARA COUNTY FIRE MARSHAL TO ABATE WEEDS – Resolution No. 5758**

Assistant to the City Manager Dile presented the staff report. She indicated that Debbie Craver with the Santa Clara County Fire Marshal's Office was in attendance to answer any questions which the Council may have.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5758, Authorizing the Santa Clara County Fire Marshal to Abate Weeds.*

City Council and Finance Authority Action

PUBLIC HEARINGS:

10. **REFINANCING OF MORGAN HILL RANCH ASSESSMENT DISTRICT BONDS – SERIES 1994 – 1. – Resolution Nos. 5759, 5760, 5761, 5762 and MHFA-3**

Director of Finance Dilles presented the staff report.

Mayor/President Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

As City Council:

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5759, Declaring its Intention to Issue Refunding Bonds and Directing Preparation of a Reassessment Report.*

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5760, Approving a Reassessment Report and Confirming Reassessments.*

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5761, Authorizing the Issuance and Sale of Bonds*

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5762, Making a Finding of Significant Public Benefit.*

As Finance Authority Commission:

Action: *On a motion by Authority Commission Member Carr and seconded by Authority Commission Member Chang, the Finance Authority Commission unanimously (5-0) **Adopted** Resolution No. MHFA-3, Authorizing the Issuance, Sale and Delivery of Bonds.*

As City Council:

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Agreements with RBC Dain Rauscher Inc. for Financial Advisory Services and with Richards, Watson & Gershon for Bond Counsel and Disclosure Counsel Services.*

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** the City Manager to Execute these Agreements.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

11. CALIFORNIA PARK AND RECREATION SOCIETY (CPRS) FACILITY DESIGN AWARD FOR THE COMMUNITY AND CULTURAL CENTER

Recreation and Community Services Manager Spier announced that the City of Morgan Hill has been awarded a competitive award from the California Park and Recreation Society for the construction of the Community & Cultural Center. She recognized Management Analyst Margarita Balagso who submitted the application on behalf of the City Council and the community. She said that the application process requires a couple of elected officials to be in attendance at the Showcase Awards to be presented in Anaheim on March 11 and 12, 2004. She requested that the Council identify representatives who can attend the awards presentation on behalf of the City.

Mayor/Chairman Kennedy stated that he read the report prepared by Ms. Balagso and the he was amazed on the quality of the report and the way it was presented. He felt that an outstanding job was done – one that captures the spirit and the intent of the Community and Cultural Center; resulting in the winning of this award. He felt that Director of Community and Development Bischoff's involvement with the management of the overall project as well as his experience and knowledge was valuable in delivering the Center.

Council/Agency Member Tate expressed his appreciation for the work put in all city applications by Ms. Balagso that includes the Library Bond applications.

Mayor/Chairman Kennedy expressed an interest in attending the awards ceremony.

Mayor Pro Tempore/Vice-chair Sellers suggested that Mayor/Chairman Kennedy and at least 1 or 2 staff members attend the awards ceremony. If there are any other Council Member interested and available to attend, that Council Members so advise staff. He felt that the Council needs to minimize costs in this budget era but felt that 1 or 2 other council members may be able to attend.

Action: *By consensus, the Council **supported** the Mayor's attendance at the awards ceremony, along with staff, as appropriate, and any other Council Members who are available to attend.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

The protocol for naming of public facilities (Mayor Pro Tempore Sellers)

Council Member Carr indicated that he and Mayor Pro Tempore Sellers discussed naming of public facilities, recommending that this topic be discussed at the legislative subcommittee and returning to the Council with a recommendation.

Council Services and Records Manager Torrez identified changes to the upcoming Council meetings.

RECONVENE TO CLOSED SESSION

Mayor/Chairman/President Kennedy adjourned the meeting to Closed Session at 8:47 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 9:45 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:45 p.m.

MINUTES RECORDED AND PREPARED BY:

**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY/
AUTHORITY SECRETARY**



CITY COUNCIL STAFF REPORT

MEETING DATE: February 4, 2004

DEVELOPMENT AGREEMENT, DA-03-14: E. CENTRAL - WARMINGTON

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant requests approval of a development agreement for Phase 3 of the Morgan Lane development, covering ten single-family lots located on the north side of East Central Avenue. Four of the planned units will be twinhomes.

Construction began on the Morgan Lane development in July 2002. Construction has been completed on 24 of 85 total planned home sites on approximately 28.345 acres. Seventeen units are currently under construction. The developer was awarded a total of 36 building allotments in the 2002 Measure "P" competition to be distributed over Fiscal Years 2004 through 2006. Twenty-four of the allotments are for FY 2004-05 and the remaining 12 allotments are for FY 2005-06. Phase 3 of Morgan Lane consists of ten lots awarded in the 2002 Measure "P" competition. A Final Map has been recorded for Phase 1. Phase 2 is still under construction. With completion of Phase 3, there will be a total of 59 units, with six below market rate units.

In accordance with established Council policy, all residential projects awarded building allotments through the Residential Development Control System (Measure "P") must secure Council approval of a development agreement. Project development agreements are required as a formal contract between the developer and the City. The Development Agreement for the initial 10-lot portion of Phase 3 is attached for Council review. The 2002 Measure "P" commitments and a development processing schedule are included within the agreement. The project development schedule is contained in Exhibit "B" of the agreement. Staff recommends approval of the development agreement, as prepared.

The Planning Commission considered this application at the regular meeting of January 13th at which time the Commission voted 7-0 to recommend approval of the Development Agreement, as prepared. The Planning Commission staff report and minutes are attached for Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City for the costs of processing this application.

Agenda Item # 21

Prepared By:

Planning Manager

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL APPROVING A
DEVELOPMENT AGREEMENT, DA 03-14 FOR MP 02-19:
E. CENTRAL - WARMINGTON (APNs 726-20-003 & 726-
28-048 through 052)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAINS AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-19: E. Central - Warmington (Phase 3)	10 single-family homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 4th Day of February 2004, and was finally adopted at a regular meeting of said Council on the 18th Day of February 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of February, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2004, by and between WARMINGTON HOMES, INC., under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On _____, 2004, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2004.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in Paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the

agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On November 7, 2001, the City of Morgan Hill approved a Precise Development Plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-19: E. Central - Warmington, on file in the Office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 10 single family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in Paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In

the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the

approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 (7000) / RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans, as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under the Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and the Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following safety features in the development:

- (i) Provide fire escape ladders for upper floor bedrooms.
- (ii) Provide one mounted fire extinguisher (rated 2A10BC) for each 1,500 square feet of floor space.
- (iii) Provide outdoor lighting to meet all police department specifications.
- (iv) Install illuminated or self-luminous address numbers for each unit and illuminated curb numbers where possible.
- (v) Use of noncombustible siding materials on at least fifty percent of the units within the project. The noncombustible siding must be used on at least fifty percent on an individual unit.
- (vi) Will provide an approved and monitored fire and intrusion alarm system within each unit.
- (vii) Provides automatic earthquake shut-off valves for gas service.

(i) Property Owner agrees to include the following open space improvements in the development:

- (i) Park and open space to be maintained by a Home Owners Association (HOA).
- (ii) Internal pathway provided leading to the park and open space area within the project.

(j) Property Owner agrees to include the following landscape improvements in the development:

- (i) Applicant will provide and install 24" box size trees (City approved) with a minimum height of nine feet and spread of three to four feet, at a ratio of one per ten site trees (excludes street trees).
- (ii) Developer will install varied front yard landscaping plans.
- (iii) Deciduous trees will be planted along the south facing side of homes or buildings to conserve energy.
- (iv) All street trees (two trees per lot, three trees per corner lot) will be 24-in. box trees from the city-approved list.
- (v) Landscape planting and irrigation systems shall be designed to conserve water.
- (vi) Drought tolerant grasses shall be used for lawn areas. Lawn areas will not exceed 25 percent of landscape area (exclusive of parks).
- (vii) Automatic irrigation systems will utilize separate valves and circuits for trees; shrubs and ground covers; and lawns areas. Minimum of three separate valves will be provided.
- (viii) Water conserving irrigation system will be used within the development
- (ix) Developer shall install non-irrigated hardscape coverage on at least 15 percent of landscape area (does not include pedestrian walkways across circulation aisles).
- (x) At least 50% of all plant material used shall be water conserving plans will be used from City Selected Plant list.
- (xi) Landscaping shall be installed on all areas visible from public and private rights-of-way.
- (xii) Existing oaks will remain or be relocated on site.
- (xiv) Project design includes 6' good neighbor fencing.
- (xv) Project desing incorporates open space easement adjacent to existing Kuwabara carnation growing center and retains the agricultural use.

(k) Property Owner agrees to the following school impact mitigations:

- (i) Applicant agrees to pay the district-adopted developer fees as required by the Leroy F. Greene Schools Facilities Act of 1998.

(l) Property Owner agrees to the following pedestrian and bicycle safety improvements:

- (i) Applicant agrees to install flashing crosswalk surface lighting at the Central Avenue-Calle Mazatan intersection, or contribute \$1,000 per dwelling unit per point for other offsite and/or traffic safety improvements approved by the MHUSD for use near their facilities.
- (ii) Project will install additional flashing yellow beacons at the intersection of Lancia and Central Avenues.

(m) Property Owner agrees to purchase 2 transferable development credit (TDC's) for every twenty-five dwelling units proposed. The applicant is currently proposing 10 units. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(n) Property Owner agrees to include the following construction features in the development:

- (i) Project will include installation of EPA "Energy Star" windows.
- (ii) High efficiency gas furnaces of 90% efficiency rating or greater shall be installed in all dwelling units and they will achieve a 15% reduction in energy use.
- (iii) Will provide two separately zoned high-efficiency heating systems in at least 60% of the units.
- (iv) Will provide recirculating hot water with demand pumping.
- (v) Class A roof covering will be installed.
- (vi) Will install ground ring cast-iron drainage pipes and piping insulation between floors for sound reduction of plumbing.
- (vii) Will provide future ready wiring.
- (viii) Will provide the following on all units:
 - Masonry (ie., stone brick, etc.)
 - Furrouths at windows and other principal openings
 - Oversized floor framing member throughout
 - Full sheet rock in garage, including tape, skim texture and paint
 - Glued and screwed sub-floor on second floor of two-story units.
 - Independent third party review for all structurally engineered elements.
- (ix) Will provide porches on a minimum of 25% of the units.
- (x) Will use at least two different roof lines and two different pitches throughout the project.
- (xi) Project will use a variety of trim and base colors throughout the project.
- (xii) Project shall use consistent detail on all sides of units.
- (xiii) Project will provide false balconies off master bedroom and/or 1'-2' furrouth at master bedrooms. Porces will be provided on plans off the rear at family room. Trim and base colors will also conform to this criteria.
- (xiv) Project will install sound insulation board in all units near noise sources.
- (xv) Air conditioning units will be located away from property lines and side yards.
- (xvi) Project shall utilize obscured glass or similar product for bathroom windows.

(o) The Property Owner agrees to provide the following circulation improvements:

- (i) Applicant agrees to provide on-site walkways.

- (ii) Overall street layout for entire project will provide for the future extension of a street to the easterly project boundary.
- (iii) Project will eliminate multiple existing street stubs along project boundaries.
- (iv) Project shall provide a minimum 20-foot clear view back-out distance between the garage and travel way.
- (v) The proposed access points to the project shall provide adequate circulation for emergency response and police patrol.

(p) The Property Owner agrees to provide the following Storm Drain improvements:

- (i) Applicant agrees to pay \$1000/unit to off-site storm drain fund.
- (ii) Applicant agrees to pay \$1000/unit to Capital Improvement Program fund.
- (iii) Project will be utilizing Central Park project's detention pond for storm drainage.
- (iv) All storm drain lines are within the paved area of the street.
- (v) Project will install a 10" water main in Serene Drive.

(q) The Property Owner agrees to provide the following park and recreation improvements:

- (i) Applicant shall dedicate a minimum of .86 acres of park space.
- (ii) All parks and open space areas will be maintained through a Home Owners Association.
- (iii) Passive recreation area, 2 tot lots, and 1 basketball/sports court will be provided within the park and open space area.
- (iv) Pathways shall be provided which link park and open space areas.
- (v) Will pay double in lieu parks fees.

(r) The Property Owner agrees to provide the following lot layout and orientation improvements:

- (i) A minimum five-foot front setback variation shall be provided between the single-family dwellings, and four foot front setback variation shall be provided between the adjoining units.
- (ii) A minimum five-foot rear setback variation shall be provided for the single family dwellings, and four-foot rear setback variation shall be provided for multi-family dwelling per the criteria.
- (iii) Project shall provide variation is garage placement and provide tandem garages.
- (iv) Sound insulation shall be provided and AC units will be located away from property lines.

(s) The Property Owner agrees to provide the following natural and environmental features:

- (i) Fill and excavations shall be less than three feet.
- (ii) All roads shall follow the existing and natural topography.

- (iii) Site plan shall preserve mature trees where possible.
- (iv) The project shall use a design and layout technique that gives individuals maximum privacy within and outside the home.
- (v) Site design shall protect current agricultural lands.
- (vi) Project shall arrange buildings, access-ways and locate open space to eliminate the need for sound walls.
- (vii) Drywall is to be source separated and recycled. Cardboard containers and boxes will be source separated and recycled.

(t) Water mains either new or existing shall be gridded from Central Ave. to Morgan Hill Business Park.

(u) The Property Owner shall record constructive notice on the Final Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement, which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraphs 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement, which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees,

unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or

prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owner: Warmington Homes
3160 Crow Canyon Place, Ste 200
San Ramon, CA 94583

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-02-19

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-02-19: E. CENTRAL – WARMINGTON
(PHASE 3 – 10 LOTS)
FY 2004-05**

I.	SUBDIVISION APPLICATION	
	Application Filed:	11-17-03
II.	SITE REVIEW APPLICATION	
	Application Filed:	9-30-03
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	1-28-04
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	3-30-04
V.	OBTAIN BUILDING PERMITS	
	Obtain building permits:	6-30-04
	Commence Construction:	9-30-04

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 50 percent of the dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

**LEGAL DESCRIPTION
MP-02-19: E. CENTRAL - WARMINGTON**

REAL PROPERTY in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Parcel One:

Remainder Lots 1 through 4, inclusive, as shown on that certain Map entitled "Tract No. 9408 Morgan Lane Phase One", which map was filed in the Office of the Recorder of the County of Santa Clara, State of California on September 3, 2002, in Book 751 of Maps, at pages 28 through 32, inclusive.

Parcel Two:

Lot 50 as shown on that certain Map entitled "Tract No. 9474 Morgan Lane Phase Two", which map was filed in the Office of the Recorder of the County of Santa Clara, State of California on September 18, 2003, in Book 764 of Maps, at pages 19 and 20.

Parcel Three:

Appurtenant to Parcel Two above, easements for vehicular and pedestrian access and for installation and maintenance of private utility facilities under, upon or over all of the streets and portions thereof, and all other easements offered for dedication, as shown on the filed Map. Said easements shall automatically terminate upon acceptance of these streets and easements by the City of Morgan Hill, pursuant to the Offer for Dedication contained within the Map.

APN: 726-28-048, 049, 050, 051, 052



CITY COUNCIL STAFF REPORT

MEETING DATE: *February 4, 2004*

RECONSIDERATION OF APPEAL OF APPEAL

APPLICATION AP-03-07: W. MAIN – VIERRA.

RECOMMENDED ACTION(S):

Council discretion. Should the City Council agree to reconsider the appeal, it is recommended the item be scheduled for the February 18, 2004 meeting.

EXECUTIVE SUMMARY

On January 14, 2004, the City Council considered an appeal of the staff decision not to accept a Measure P application for a proposed 6-lot development on West Main Avenue. The application was filed for consideration in this year's "Micro Project" Measure P competition. As proposed, the project would establish building envelopes for four of the lots on the portion of the site designated as Open Space. Locating four homes in the Open Space zone is inconsistent with the General Plan and Zoning because 1) the proposed lots would not meet the five acre minimum lot size; and 2) the General Plan allows only the one existing dwelling in the Open Space area. Given the above determination, the application was not accepted for processing. The Council did not act on the appeal and instead directed the City Attorney to seek declaratory relief action by the court. Staff has continued to process the Measure P application while the City awaits a court ruling.

On January 21, 2004, the appellant's attorney, Bruce Tichinin, addressed the City Council during the public comment period of the meeting. Mr. Tichinin asked the Council to reconsider its earlier decision to seek declaratory relief by the court. In response to the request, the Council asked that this item be scheduled for discussion at the February 4, 2004 meeting. Should the City Council agree to reconsider, it is recommended the matter be scheduled for the next City Council meeting on February 18, 2004. Should the Council elect not to reconsider the matter; the City Attorney will proceed with the declaratory relief action as directed. The matter will return to City Council after the court has rendered its decision. A letter from Mr. Tichinin requesting reconsideration of the matter on February 18, 2004 is attached.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 22

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager